



*Off 2/28*  
*Brian K.*  
*pls include in material*  
*sent to Bd members for*  
*review on 13 Mar.*

February 25, 2002

Mr. John Minan, Chairman  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123  
FAX 858-571-6972

RE: March 13 Agenda, Item #7. Tentative Order No. R9-2002-0025.

Dear Chairman Minan,

The City of Chula Vista joins the Metropolitan Wastewater Commission in supporting the tentative order referenced above. This order would renew the waiver granted to the San Diego region, allowing the Point Loma wastewater treatment facility to operate at its current level of outfall treatment.

Scientific evidence, obtained through testing of the ocean waters near the Point Loma Outfall, gives no indication that plant effluent is damaging the ocean environment. An increase to secondary treatment would, however, greatly amplify the cost of wastewater disposal to the citizens of Chula Vista and the rest of the San Diego region while not benefiting the ocean significantly. Residents and business owners, already struggling with the effects of deregulation of the electric utility industry as well as a nation-wide recession, would face staggering and unnecessary cost increases of 150 - 300%.

On behalf of the Chula Vista City Council, I respectfully request your support of Tentative Order No. R9-2002-0025 when it comes before your Board on March 13, 2002.

Sincerely,

*Shirley Horton*  
Shirley Horton, Mayor

cc:

- Jay Goldby; Chair, Metropolitan Wastewater Commission
- Chula Vista City Council

# CITY OF EL CAJON

March 5, 2002

California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Re: Waiver Renewal to the City of San Diego for Secondary Treatment

Ladies and Gentlemen:

The City of El Cajon supports the adoption of Tentative Order No. R9-2002-0025 (NPDES Permit No. CA0107409) granting the City of San Diego renewal of the waiver from secondary treatment at the Point Loma Wastewater Treatment Plant.

This recommendation is based on the available scientific evidence indicating that the current system of treatment performed at the treatment plant causes no environmental harm to the ocean or shoreline environments. The evaluation by the EPA found that the current system fully protects the environment and the public health. The proposed NPDES permit by the EPA provides full protection of the environment and the public health.

If the waiver is not granted it will be necessary to significantly raise the sewer fees for the constituents of the City of El Cajon to pay for the construction of secondary treatment facilities at Point Loma. Evidence has shown secondary treatment is unnecessary and will not provide any further protection to the environment and public health. The financial burden on the citizens of the City of El Cajon and all the ratepayers of the Participating Agencies of the Metropolitan Sewage System would be unnecessary and significant.

Thank you for your consideration.

Yours truly,



Mark Lewis

Mayor

ML:er

2002 MAR - 7 1:07

SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD



# CITY OF EL CAJON

February 27, 2002

California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Re: Waiver Renewal to the City of San Diego for Secondary Treatment

The City of El Cajon supports the adoption of Tentative Order No. R9-2002-0025 (NPDES Permit No. CA0107409) granting the City of San Diego renewal of the waiver from secondary treatment at the Point Loma Wastewater Treatment Plant.

This recommendation is based on the available scientific evidence indicating that the current system of treatment performed at the treatment plant causes no environmental harm to the ocean or shoreline environments. The evaluation by the EPA found that the current system fully protects the environment and the public health. The proposed NPDES permit by the EPA provides full protection of the environment and the public health.

If the waiver is not granted it will be necessary to significantly raise the sewer fees for the constituents of the City of El Cajon to pay for the construction of secondary treatment facilities at Point Loma. Evidence has shown secondary treatment is unnecessary and will not provide any further protection to the environment and public health. The financial burden on the citizens of the City of El Cajon and all the ratepayers of the Participating Agencies of the Metropolitan Sewage System would be unnecessary and significant.

Thank you for your consideration,



Richard Ramos  
Councilmember and Representative to the  
Metro Commission and Metro Wastewater  
Joint Powers Authority

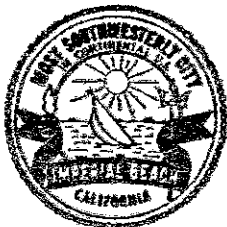
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Bill Garrett  
City Manager

2002 MAR - 5 P 11:14

SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD



# City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

March 11, 2002

David Hansen  
California Regional Water Quality Control Board  
San Diego Region (WTR-5)  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

**Re: Support for EPA Tentative Order for the NPDES Permit for the City of San Diego's Point Loma Wastewater Treatment Plant**

Dear Mr. Hansen,

On behalf of the Mayor and City Council of the City of Imperial Beach, I want to notify you of their formal action to SUPPORT the Environmental Protection Agency's tentative decision to allow continued discharge from the City of San Diego Point Loma Wastewater Treatment Plant (Order No. R-92002-0025, NPDES Permit No. CA0107409).

In conjunction with this letter of support, the Mayor and City Council do request that any and all efforts be made to improve compliance within the five year term of the tentative permit; and any and all efforts are directed towards continued and enhanced monitoring and study of potential environmental impacts. Periodic monitoring and study results should be provided to all commenting and interested parties.

Please call 619-423-0314 if you have any questions.

Sincerely,

Barry Johnson  
City Manager

c: Augie Caires, Padre Dam, Metro Commission  
Robin Stuber, EPA

SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

2002 MAR 14 P 12:55



## THE CITY OF SAN DIEGO

March 12, 2002

Mr. David Hanson  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD  
2002 MAR 12 PM 3:27

Dear Mr. Hanson:

The City of San Diego wishes to provide the following written comments in regard to tentative Order No. R9-2002-0025, draft NPDES permit No. CA0107409 and tentative Monitoring and Reporting Program No. R9-2002-0025 for the E.W. Blom Point Loma Metropolitan Wastewater Treatment Plant. The individual comments are numbered below and are divided into two sections - typographical errors and substantive comments:

### TYPOGRAPHICAL ERRORS

#### 1) Tentative Order, page 5, item number 8.

This paragraph states that the South Bay Water Reclamation Plant began operation in December 2001. It has not yet begun operation, but we expect it will begin operation in March of 2002. Additionally, the effluent from this plant will discharge approximately 3.5 miles offshore through the South Bay Ocean Outfall, not one mile as is written here.

#### 2) Tentative Order, page 8, item number 16.

The first sentence is difficult to understand as written. Suggested rewrite, "The City has implemented a reclamation program with a system capacity of 45 MGD of reclaimed wastewater with the addition of the South Bay Reclamation Plant. This meets the requirement for reclaimed water capacity of 45 MGD prior to the January 1, 2010 deadline."

#### 3) Tentative Order, check for consistency

The Point Loma Wastewater Treatment Plant is abbreviated as both PLMWTP and PTWWTP. The first page states that it should be abbreviated as PLMWTP

#### 4) Tentative MRP, page 4, item 18 (line 15)

Minor format correction regarding the apostrophe in "discharger's" (it's currently a box).



**Environmental Monitoring and Technical Services Division • Metropolitan Wastewater**

4918 North Harbor Drive, Suite 201 • San Diego, CA 92106-2359

Tel (619) 758-2300 Fax (619) 758-2309

Page 2  
D.Hanson  
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- 5) **Tentative MRP, page 6, point 22, reporting schedule table**  
Minor format correction under Receiving Waters Monitoring Report needs a space between "monitoring" and "report."
- 6) **Tentative MRP, Receiving Environment Monitoring, Receiving Water Sampling and Analyses Requirements, page 17, paragraph 3 (line 2)**  
Delete "shall be monitored" following the parenthetical list of kelp stations – it's redundant to what is said prior to the parentheses.
- 7) **Tentative MRP, Receiving Environment Monitoring, Receiving Water Sampling and Analyses Requirements, page 17, paragraph 4 (line 3)**  
Missing word – insert "contour" after 45-meter.
- 8) **Tentative MRP, Receiving Environment Monitoring, Receiving Water Sampling and Analyses Requirements, page 17, paragraph 4 (line 4)**  
Change "200-foot contour" to "60-meter contour" for consistent use of metric terminology.
- 9) **Tentative MRP, Receiving Environment Monitoring, Benthic Monitoring Requirements, Fish Monitoring, page 21, paragraph 2 (line 1)**  
Change "station" to "stations."
- 10) **Tentative MRP, last two pages, Briefing Papers for OWOW Review**  
Perhaps these were inadvertently included?
- 11) **Fact Sheet, EFFLUENT LIMITATIONS, page 9, second paragraph**  
The flow rate of 205 MGD should be 195 MGD.

**SUBSTANTIVE COMMENTS:**

- 1) **Tentative Order, section B.1.c (pg. 17) and section C.3.b (pg. 30)**  
For consistency, the Order and the MRP requirement for Chromium throughout both documents should have the same footnote attached. This footnote states that "The discharger may, at its option, meet this requirement using a total chromium value." These two sections do not reference the footnote.
- \*\*2) Tentative Order, Section C.3.a, page 28**  
The values in the Water Quality Objectives table have been changed to reflect the new California Ocean Plan (COP). The silver values, however, did not change. The values in the new COP are 0.45, 1.8 and 4.5. Is it simply an oversight that these numbers were not changed?

**\*\*3) Tentative Order, Pretreatment Requirements, page 34, first paragraph.**

The reporting deadline for the Annual Pretreatment Report was extended from March 1 to April 30. We need to extend it only to April 1. This would be consistent with other reporting deadlines in the Order.

**4) Tentative Order, Section F.9, Minimum Levels, page 42**

We request time to propose and implement an action plan for dealing with the technical problems and inconsistencies that arise when applying the new Ocean Plan standards for minimum levels to the samples required in this Order and MRP. We will need to interface closely with the RWQCB and the USEPA to develop methodologies and work through practical issues that arise. We request one year to implement the minimum level requirements.

**5) Tentative Order, Compliance Determination, page 46, item 13.**

We suggest adding *Mysidopsis bahia* to the list of test species and methods in order to have more than one species for which acute toxicity tests can be conducted.

The screening requirement for chronic toxicity states that the initial screening shall take place on the first three suites of tests. The language following that with respect to screening is ambiguous. We suggest in subsequent years that screening be reduced in frequency to once every other year and that subsequent screening periods may be limited to 1 month if those results are the same as the previous 3-month screening. Given that the acute toxicity requirement is semi-annual testing, we suggest the screening requirement for acute tests be limited to three tests at the beginning of the permit cycle, and that it not be required again for this permit.

**6) Tentative MRP. Section A.20, page 5**

We request to change the reporting frequency of the connection information from monthly to either quarterly or annually. Monthly reporting of that information is not particularly meaningful.

**7) Tentative MRP, page 6, item 22, reporting schedule table**

The kelp report, a combined effort of all ocean dischargers in Region 9, did not have a reporting deadline in previous permits. This report has historically been presented to the RWQCB as a group effort in October. Therefore, we would like the reporting deadline for this report extended to October 1, allowing for input from all of the participating agencies before it is submitted.

**8) Tentative MRP, page 6, item 22, reporting schedule table**

The reporting schedule listed does not match the reports or the dates that are required in the text portion of the MRP. The following change is suggested to maintain consistency with other portions of the MRP and the Tentative Order and the requested changes to reporting dates noted above:

<u>REPORTS</u>	<u>Report Period</u>	<u>Report Due</u>
<b>MONTHLY REPORTS</b> Influent and Effluent Solids Removal/Disposal Receiving Water Quality Report Tijuana Cross-Border Emergency Connection (when flowing)	Monthly	By the 1 <sup>st</sup> day of the 2 <sup>nd</sup> following month (e.g., March 1 for January)
<b>QUARTERLY REPORTS</b> Sludge Analysis Benthic Infauna Trawl Ocean Sediments	January - March April - June July - September October - December	June 1 September 1 December 1 March 1
<b>SEMI-ANNUAL REPORTS</b> Pretreatment Report	January - June	September 1
<b>ANNUAL REPORTS</b> Pretreatment Report (Provision A.19) Sludge Analysis QA Report Flow Measurement Outfall Inspection Receiving Waters Monitoring Report Kelp Report	January - December	April 1 April 1 March 30 July 1 July 1 July 1 October 1

9) **Tentative MRP, Receiving Environment Monitoring, Offshore Water Quality Stations, page 13 (table)**

Because of increased accuracy of GPS locations, small latitude/longitude corrections are needed for stations C4, C5 and C6 in the station location table. We have also included more accurate descriptions of these station locations. The updated coordinates and descriptions for these stations are in **BOLD** type:

Station	Depth (m)	N. Latitude	W. Longitude	Descriptor
C4	9	32° 39.95'	117° 14.98'	Approx. 660 m (2200 ft) west of the Point Loma Lighthouse and 1600 m south of the treatment plant outfall pipe
C5	9	32° 40.75'	117° 15.40'	Approx. 800 m (2600 ft) seaward of the Point Loma treatment plant immediately south of the outfall pipe
C6	9	32° 41.62'	117° 15.68'	Approx. 890 m (2900 ft) seaward and perpendicular to a point 1260 m north of the outfall pipe



10) **Tentative MRP, Receiving Environment Monitoring, Shore Stations, page 14 (table)**

We request that you drop shore stations D1, D2 and D3 from the shoreline monitoring program. These three stations are replicated in the International Wastewater Treatment Plant Monitoring and Reporting Program No. 96-50 as stations S12, S8 and S9. Those stations are sampled weekly as part of the monitoring required for the South Bay Ocean Outfall. Their inclusion in this permit amounts to double reporting of identical data.

11) **Tentative MRP, Receiving Environment Monitoring, Shore Stations, page 14 (table)**

Because of increased accuracy of GPS locations, a small longitude correction is needed for station D6. The updated coordinates for this station are in **BOLD** type:

Station	N. Latitude	W. Longitude	Description
D6	32° 41.92'	117° 15. <b>33</b> '	Approx. 1260 m (4150 ft) north of the outfall pipe at NOSC seawater pump station

12) **Tentative MRP, Receiving Environment Monitoring, Fish Trawl and Rig Fish Stations, pages 14-15 (table)**

Because of increased accuracy of GPS locations, small depth and latitude/longitude corrections are needed for several stations. The updated coordinates and descriptions for these stations are in **BOLD** type:

Station	Depth (m)	N. Latitude	W. Longitude
SD1	60	32° 46.40'	117° 18.60'
SD3	60	32° 41.76'	117° 17.30'
SD6	60	32° 39.47'	117° 16.85'
SD11	90	32° 40. <b>73</b> '	117° 19. <b>36</b> '
SD12	100	32° 40. <b>65</b> '	117° 19. <b>81</b> '

**\*\*13) Tentative MRP, Section D.2, page 16**

We request to drop the oil and grease analysis for receiving waters. The methodology for this analysis has recently been restricted by the EPA, disallowing the infrared spectrographic method because of the freon extraction process that is required. The gravimetric method will have to be employed on future samples. This method is much less sensitive and will produce even less meaningful results than we have historically collected. The usefulness of these data using the spectrographic method was negligible. The loss of sensitivity with the gravimetric method will provide no useful information.

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D.Hanson  
3/12/02

If you have questions or need more information about any of these requests, please contact myself or Lori Vereker, Assistant Deputy Director, at 758-2300.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan C. Langworthy".

Alan C. Langworthy  
Deputy Metropolitan Wastewater Director

LAV:lv

cc: Scott Tulloch  
Lori Vereker  
File

LESLIE E. DEVANEY  
ANITA M. NOONE  
LESLIE J. GIRARD  
SUSAN M. HEATH  
GAEL B. STRACK  
ASSISTANT CITY ATTORNEYS

TED BROMFIELD,  
SENIOR DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

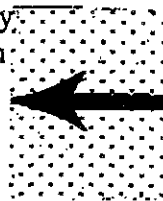
Casey Gwinn  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1100  
SAN DIEGO, CALIFORNIA 92101-4100  
TELEPHONE (619) 533-5800  
FAX (619) 533-5856

March 12, 2002

U.S. Environmental Protection Agency  
Attention: Ms. Robyn Stuber  
WTR-5, Region IX  
75 Hawthorn Street  
San Francisco, CA. 94105-3901  
Via Facsimile: (415) 744-1041

California Regional Water Quality  
Control Board, San Diego Region  
Attention: Mr. David Hanson  
9174 Sky Park Court, Suite 100  
San Diego, CA. 92123-4340  
Via Facsimile: (858) 571-6972



Dear Ms. Stuber and Mr. Hanson:

*City of San Diego's Comments on  
Tentative Order No. R9-2002-0025  
NPDES Permit No. CA 0107409*

This letter is a portion of the written comments of the City of San Diego ("City") regarding Tentative Order No. R9-2002-0025 (NPDES Permit No. CA0107409) for the discharge of treated wastewater from the E.W. Blom Point Loma Metropolitan Wastewater Treatment Plant, as issued by the California Regional Water Quality Control Board, San Diego Region ("Regional Board"), and the Region IX Environmental Protection Agency ("EPA") on February 11, 2002 ("Draft Permit"). The City very much appreciates the opportunity to provide these comments. These written comments will be supplemented by the oral comments that City staff will provide at the public hearing, currently scheduled for Wednesday, March 13, 2002.

In general, the Draft Permit is consistent with the City's application, and the City is very pleased with the limits included in the Draft Permit. The City does not object to compliance with the current limits.

It appears, however, that EPA has relied upon the Ocean Pollution Reduction Act of 1994, 33 U.S.C. § 1311(j)(5) ("OPRA") as authority for the Draft Permit. In the Fact Sheet supporting the Draft Permit, for example, EPA specifically relies on "Sections 301(h) and (j)(5) of the CWA." Fact Sheet at 6 ("Basis for Requirements"). Section 301(j)(5) of the Clean Water Act ("CWA") is the codified version of OPRA.

OPRA is inapplicable to the Draft Permit, and EPA may not rely upon OPRA for authority for the Draft Permit. OPRA currently has no legal effect whatsoever. It served its

Ms. Stuber and  
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purpose when it provided the City with a limited, one-time reopener of the original deadline under which city waste treatment facilities could apply for waivers from secondary treatment requirements. In order to explain this issue, it is necessary to briefly review some of the history of OPRA and its application to the Point Loma discharge.

#### History of OPRA and its Application to the Point Loma Discharge

Pursuant to Section 301(h) of the CWA, EPA may issue modified secondary treatment standards ("waivers") for certain ocean discharges by publicly owned treatment works ("POTWs"). The law originally required that waiver applications be filed by December 29, 1982, or in conformance with EPA regulations.<sup>1</sup>

On August 31, 1979, the City submitted an application to EPA for a Section 301(h) waiver for the Point Loma Wastewater Treatment Plant. EPA initially granted the waiver, but later reversed its decision and denied the request.

In 1988, EPA filed a claim entitled *United States of America, et al. v. City of San Diego*, Case No. CV-88-1101-B, against the City in an attempt to require the City to implement secondary treatment at Point Loma. The District Court, however, twice held that the discharge of wastewater from the deep ocean outfall at Point Loma did not adversely impair the marine environment, and that implementing secondary treatment standards at Point Loma constituted "wasteful overtreatment." *United States v. City of San Diego*, 1994 WL 521216, 38 ERC 1718, slip op. at \*5-\*6 (S.D. Cal. March 31, 1994); *United States v. City of San Diego*, 1991 WL 163747, 21 Env.L.Rep. 21,223 (S.D. Cal. Apr. 18, 1991).

On October 31, 1994, Congress enacted OPRA. The bill was passed with very little debate. See 103 Cong. Rec. H10944 (Oct. 5, 1994). OPRA provided the City with a limited one-time, 180-day window within which to apply for a Section 301(h) waiver. OPRA also imposed several conditions on the City's ability to file its initial application. As amended by OPRA, Section 301(j)(5) of the CWA provides in relevant part:

(5) Extension Of Application Deadline

(A) In general

In the 180-day period beginning on October 31, 1994, the city of San Diego, California, may apply for a modification pursuant to subsection (h) of this section of the requirements of subsection (b)(1)(B) of this section with respect to biological oxygen demand and total suspended solids in the effluent discharge into marine waters.

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<sup>1</sup> The regulations promulgated under Section 301(h) are applicable to the vast majority of cities in the United States. See 40 C.F.R. Subpart G, §§ 125.56, *et seq.*

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Mr. Hanson

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(B) Application

An application under this paragraph shall include a commitment by the applicant to implement a waste water reclamation program that, at a minimum, will—

(i) achieve a system capacity of 45,000,000 gallons of reclaimed waste water per day by January 1, 2010; and

(ii) result in a reduction in the quantity of suspended solids discharged by the applicant into the marine environment during the period of the modification.

(C) Additional Conditions

The Administrator may not grant a modification pursuant to an application submitted under this paragraph unless the Administrator determines that such modification will result in removal of not less than 58 percent of the biological oxygen demand (on an annual average) and not less than 80 percent of total suspended solids (on a monthly average) in the discharge to which the application applies.

These conditions are collectively referred to hereafter as the "OPRA Conditions."

The City submitted its waiver application within the OPRA Conditions, and was granted the requested permit, with waiver, in November of 1995. Until 1999, the City believed that future permit applications would be considered under the normal Section 301(h) regulations, and not OPRA. This made perfect sense: the City had missed its original deadline for application under OPRA, and had been penalized with five years under an exceptionally strict statute in exchange for the reopener of the deadline. There was no indication that EPA would consider OPRA a permanent statute that imposes extraordinary limits on the City in perpetuity.

In 1999, the City learned that EPA was considering whether to apply the OPRA Conditions to the City's future permit applications. On December 13, 1999, the Mayor of the City, Susan Golding, requested EPA's formal position on this issue.

On February 17, 2000, EPA Regional Administrator Felicia Marcus responded by stating EPA's preliminary position that the City would be required to demonstrate compliance with the OPRA Conditions as a condition to all future permits. Letter from Felicia Marcus to Mayor Susan Golding (Feb. 17, 2000) at 1. In her letter, Ms. Marcus indicated that EPA's decision was not final, and that EPA would keep an open mind as to the applicability of OPRA to future discharges. *Id.*

In direct response to the issue of continuing applicability, the author of OPRA, Congressman Bob Filner, wrote to then EPA Administrator Browner on February 18, 2000, to "clarify the purpose, meaning, and intended effect of H.R. 5176 (OPRA)." Letter from Rep. Filner of Feb. 18, 2000 ("Filner Letter") at 1. The congressman quoted his and a colleague's remarks on the floor of the House and concluded:

Ms. Stuber and  
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As the language of the bill and these statements indicate, H.R. 5176 was prepared, introduced and passed simply to give the City of San Diego a method to reapply, to receive its 301(h) waiver application. The five conditions in the bill were designed to demonstrate the City's commitment to environmental protection and confirm the City's commitment to water reclamation, a valuable source of water in the water-scarce area of Southern California. Once these conditions were demonstrated and completed, *my intent was to have all subsequent 301(h) waiver applications evaluated solely under the prevailing conditions of the Clean Water Act, since in so doing, all public dischargers would be evaluated under the same criteria applied to other cities and provided for in the Clean Water Act.* To force the City of San Diego to duplicate these conditions in every subsequent application was not the intent nor the purpose of H.R. 5176.

Filner Letter at 1-2 (emphasis in original).

On March 2, 2000, the City filed a complaint against EPA on the grounds that OPRA did not apply to the City's discharge from the Point Loma facility after the initial application. EPA defended the suit on the grounds that EPA had not yet reached a final decision. On March 13, 2001, the Ninth Circuit Court of Appeals confirmed that EPA's decision was not final. *City of San Diego v. Whitman*, 242 F. 3d 1097, 1102 (9th Cir. 2001). The City's lawsuit was therefore dismissed, *solely* on the grounds that EPA had not made a final decision, and therefore that the matter was not ripe for appeal.

#### Effect of Perpetual Application of OPRA

EPA's interpretation of OPRA would have a disastrous effect on the City's wastewater treatment program. If OPRA applies perpetually, as EPA argues it should, the City would be forced, ultimately, to attain secondary treatment standards to meet the conditions. Compliance would require early construction of at least one additional wastewater treatment facility, at a minimum estimated cost of \$366 million, and increases in requested planning costs and site acquisition costs. These costs would be financed by unknown increases in sewer rates paid by the citizens of the City. The City would also be forced to retire and replace a minimum of 25 percent of its existing advanced primary facilities to make room for secondary treatment facilities. The improvements to Point Loma's state of the art advanced primary facilities are currently valued at \$1.1 billion. Imposition of OPRA would make much of this work obsolete. All estimates show a significant reduction in capacity if Point Loma must be converted to secondary treatment.

As discussed above, the City has demonstrated that these costs are unnecessary. The unusual oceanography, deep discharge, and enormous mixing zones near the City make secondary treatment unnecessary for the discharge from Point Loma. As discussed above, after hearing the expert testimony presented by the City and EPA on this point, a federal District Court twice held secondary treatment to be "wasteful overtreatment" if applied at Point Loma.

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Mr. Hanson

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### OPRA Only Applied During The Initial Permit Period

The only dispute between the City and EPA is a simple matter of statutory construction. The City believes that OPRA was intended to act as a one-time reopener, and that for permit applications filed thereafter, the City would act under the CWA Section 301(h) regulations, as do all other cities. The EPA's initial and nonfinal belief was that OPRA applies in perpetuity, permanently subjecting the City to standards more strict than any other city regulated by Section 301(h).

In determining whether the agency's interpretation is based on a permissible construction of the statute, the proper approach to is to begin with the express language of the statute. *Citizens Action League v. Kizer*, 887 F. 2d 1003, 1006 (9th Cir. 1989) ("In construing a statute, we look first to its plain meaning.") Where, as here, the language of the statute is plain and unambiguous, resort to legislative history is unnecessary. *Wintun Indians v. Wilson*, 64 F. 3d 1250, 1257 (9th Cir. 1994). If the statute is ambiguous, legislative history is an appropriate source of guidance as to the proper interpretation of a law. *Id.*

OPRA expressly applies only to EPA's initial approval of the City's 1995 application. 33 U.S.C. § 1311(j)(5). Nothing in OPRA provides EPA with any authority to promulgate rules and/or policies for the permanent, perpetual enforcement of OPRA. The plain language of the statute clearly limits its application to the City's 1995 application.

At the outset, one need only look to the title of OPRA to discern its limited temporal application. The title of OPRA is "*Extension of Application Deadline*," plain and simple. There is no dispute that the "Deadline" referred to in the title is the original December 29, 1982 date in the Clean Water Act for the submission of Section 301(h) waiver applications. 33 U.S.C. 1311(j)(1)(A). There is no suggestion in the title that OPRA was intended to do anything other than reopen the application period.

The text of OPRA is consistent with its title. Indeed, virtually every section of OPRA is limited in scope to the one and only permit application that was authorized by the statute. For example, Section (A) of OPRA permits the City to *apply* for a permit within the 180 days following October 31, 1994. 33 U.S.C. § 1311(j)(5)(A). Said another way, OPRA granted the City a limited window within which it would apply for a Section 301(h) waiver application, and that window closed by a date certain, April 29, 1995. EPA was then given in Section D of OPRA only one year within which it must announce a preliminary decision on the application that was authorized by OPRA. 33 U.S.C. § 1311(j)(5)(D). There are *no* other provisions in OPRA that refer to or otherwise govern any additional applications or, for that matter, any EPA review of any subsequent application.

The language of the OPRA Conditions is similarly limited. Sections (B) and (C) of OPRA establish the threshold conditions that must appear in the application. 33 U.S.C. §§ 1311(j)(5)(B), (C). The opening sentence of Section (B) makes clear that its two conditions (reclamation capacity and solids reduction) only apply to the "application under this paragraph," which, of course, is the application that must be filed no later than April 29, 1995 that is referred

Ms. Stuber and  
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March 12, 2002

to in Section (5)(A) of OPRA. The same is true with respect to Section (C), which limits the BOD condition to "an application submitted under this paragraph." Here again, the application referred to in this Section is the lone application authorized by OPRA. Simply put, the use of the singular article "an" when referring to "~~an~~ application" in each of these Sections demonstrates that OPRA was only to be applied once. Even EPA concedes that OPRA does not contain any reference to future applications in any way. See Letter from Felicia Marcus to Mayor Susan Golding (Feb. 17, 2000) at p.1. Therefore, EPA's interpretation is therefore not a permissible interpretation of the plain language of the statute.

Further, subsequent legislative history supports the City's position that OPRA was a one-time reopener. In 1995 Congress rejected efforts to enact a permanent waiver for the City, finding instead that the City should have to reapply for renewal of its waiver like all other cities. See San Diego Coastal Correction Act of 1995, H.R. 1943, H.R. No. 192, 104th Cong., 1st Sess. (Jul. 18, 1995) at 13-14 (remarks of Rep. Mineta): "Last year's enacted bill [OPRA] authorized San Diego to apply for and receive a waiver *under the same terms as all other communities that have permits with waivers*" (emphasis added).

Furthermore, common sense dictates that OPRA cannot be applied in perpetuity. The limits in OPRA were based on a one-time snapshot for the City's 1995 permit renewal. OPRA is too rigid and lacks the flexibility necessary for long-term wastewater treatment planning, especially for a growing region of over 2.7 million ratepayers. EPA's application of the OPRA conditions to the City in perpetuity would make long-term planning impossible, as OPRA has no fixed standard of solids reduction. Congress could not have intended such an absurd result.

#### The EPA Need Not Force Resolution Of The OPRA Dispute In The Draft Permit

The disagreement between the City and EPA need not be resolved at this time. The Draft Permit is consistent with the City's permit application, which did not rely upon OPRA. The Draft Permit can be issued pursuant to the EPA's authority under Section 301(h) and the regulations promulgated there under at 40 C.F.R. Subpart G, §§ 125.56, *et seq.* ("Subpart G"). As they stand in the Draft Permit, the limits are consistent with sound science and the technical policies required by Section 301(h) and Subpart G. As such, EPA need not rely upon OPRA to justify the limits in the City's Draft Permit.

Since Section 301(h) and the NPDES regulations support the limits in the Draft Permit, there is no need at this time to determine whether OPRA applies in perpetuity to the Point Loma NPDES permit. This is an issue of statutory construction that need not be decided at this time. Where there is no need to construe a federal statute, the construction should be avoided. The avoidance of unnecessary interpretation of federal law is a longstanding rule of statutory construction. See, e.g., *In re Hubs Repair Shop, Inc.*, 28 B.R. 858, 862 (Bankr. N.D. Iowa 1983); *Siler v. Louisville & N.R. Co.*, 213 U.S. 175, 193 (1909) (preferable for a court to determine an issue on state grounds rather than federal).



Ms. Stuber and  
Mr. Hanson

-7-

March 12, 2002

Since the Draft Permit can be issued without reliance upon OPRA, the City urges EPA to issue the permit in this manner. If the EPA relies upon OPRA in the Draft Permit without need to do so, EPA will force litigation that need not take place at this time. This would be a waste of resources for both EPA and the City.

In order to implement the City's suggestion, the EPA could clarify that it is relying upon its authority under the non-OPRA sections of the CWA to issue the permit. The City would suggest the inclusion of the following language as a modification of the existing footnotes to implement this purpose:

EPA recognizes that there is a dispute between EPA and the City over whether Section 301(j)(5) governs the renewal of the City's permit in perpetuity. Since the discharge limitations in this permit conform to the technical limits of Section 301(j)(5), this permit does not decide the legal issue of whether Section 301(j)(5) applies to the renewal of the City's permit in perpetuity.

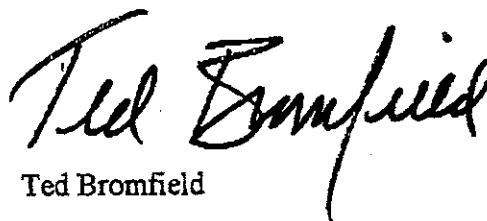
Should EPA issue the Draft Permit based on its authority under the non-OPRA sections of the CWA (as it clearly may do in the current situation), neither EPA nor the City would be precluded from raising the issue in future litigation, if and when EPA chooses to apply OPRA to the Permit. This result is consistent with EPA's apparent intent in footnote 1 at page 8 of the Draft Permit (noting that the Draft Permit is issued without prejudice to the rights of either EPA or the City to address the applicability of OPRA in later legal proceedings).

The City appreciates this opportunity to provide comments on the Draft Permit, and hopes that its comments will assist EPA in drafting the final permit. The City looks forward to the opportunity to discuss its position during the initial public hearing on March 13, 2002.

Respectfully submitted,

CASEY GWINN, City Attorney

By



Ted Bromfield

Senior Deputy City Attorney

Ms. Stuber and  
Mr. Hanson

-8-

March 12, 2002

cc: Robert Moyer, EPA Senior Regional Counsel  
via fax: (619) 235-4771  
Scott Tulloch, Metro Wastewater Dept Director  
via fax: (858) 292-6420  
Alan C. Langworthy, MWWDD Deputy Director  
via fax: (619) 758-2309  
Richard Mendes, City Utilities General Manager  
via fax: (619) 236-6751



**DICK MURPHY**  
MAYOR

March 12, 2002

Chairman John Minan  
Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Ms. Alexis Strauss  
Director, Water Management Division  
75 Hawthorne Street  
San Francisco, CA 94105

Dear Chairman Minan, Ms. Strauss and Members of the Board:

Thank you for the opportunity to address you today on such an important matter as the operating permit for our Point Loma Wastewater Treatment Plant. Thank you for the diligence with which you are addressing this matter. We also appreciate the candor, professionalism and tremendous efforts your staff has displayed in their review of the volumes of technical data in our permit application.

I am certain that you all recall my inaugural State of the City address last year, in which I identified 10 goals for the City of San Diego. Goal Number 4 is **"cleaning up our beaches and bays"**. It is unacceptable to this City Council and me that our beaches and bays are polluted year after year.

In response to this problem, Council member Scott Peters and I formed the Clean Water Task Force. The Clean Water Task Force includes representatives from the environmental and business communities, regulators, water quality scientists and elected officials. The Clean Water Task Force is overseeing the City's aggressive implementation of the storm water permit adopted by this board last year. We are charting a course to reduce beach postings and closures 50% by the year 2004.

In addition, the City of San Diego has approved an annual sewer rate increase of 7 ½ % per year for the next four years. With this funding increase, the City will:

1. Triple the rate of replacing deteriorating sewer lines from 20 to 60 miles per year.
2. Televis and assess the interior of 1000 miles of aging sewer lines to prioritize replacement.
3. Clean the entire 3000 miles of sewer lines in the City of San Diego.

Our goal is to reduce sewer spills in the City 25% by the year 2004.

Regarding the modified permit for the Point Loma Wastewater Treatment Plant, the Environmental Protection Agency has reviewed years of technical monitoring data to determine that our advanced primary treatment achieves all state and federal water quality standards. To ensure the compliance is maintained in the future, the City will continue to conduct the rigorous ocean monitoring and scientific studies necessary.

In light of these findings, I cannot recommend that the region's taxpayers double their sewer rate to fund a \$2 billion secondary treatment program that does nothing more than meet water quality standards our current system is already attaining. I have, instead, directed the City to spend its limited resources to stop harmful storm water runoff and sewer spills that cause beach closures and place the public health in jeopardy. Such programs are nothing less than smart investments in our health and the health of our environment.

In summary,

1. We agree with the assessment by the US EPA that the present treatment system has had no significant adverse impact on the ocean environment.
2. We also agree that the provisions of the draft modified permit, as proposed by your staff, will ensure that no negative impacts will occur in the future.
3. We strongly urge that you approve the tentative decision and draft permit recommended by your staff.

The public expects clean water. The Clean Water Act requires clean water. The City of San Diego will fulfill its obligations to the public and the law.

Best regards,

A handwritten signature in black ink, appearing to read "Dick", with a stylized flourish extending from the end.

Dick Murphy  
Mayor  
City of San Diego

DM/rb

*GM 3/13 David H. \_\_\_\_\_  
pls include in the record  
of the Pt Loma NPDES permit  
Hearing today*

**RWQCB Waiver Hearing Remarks For Councilman Scott Peters**

Chairman Minan and members of the Regional Board and Ms. Straus, good morning and thank you for giving me the opportunity to speak before you today. For the record I am Scott Peters, Councilman from the City of San Diego's District One, which includes much of the coastline of our City. Since being elected I have been working closely with Mayor Murphy as Co-Chair of the Clean Water Task Force, to find creative strategies that will be effective in improving water quality at our area beaches. We have appreciated the participation and insight of your executive officer John Robertus on the Clean Water Task Force and look forward to his continued participation.

As the Mayor stated there has been new emphasis placed on water quality at the City of San Diego and we have taken bold, aggressive steps to improve water quality including a significant sewer rate increase to pay for a billion dollar capital program to repair and replace our aging sewer collection system. I would also add that we have just completed a 1.6 billion dollar upgrade to our treatment and disposal facilities, including a major commitment to water reclamation. Over the past decade we have lengthened our Pt Loma outfall, completed the North City Water Reclamation Plant, completed the Metro Biosolids Center, completely renovated the Pt Loma waste water facility to a state of the art chemically assisted advanced primary treatment facility and we recently finished the South Bay Water Reclamation Plant. Additionally we have enhanced our toxics control by enhancing the household hazardous waste program, opening a new collection center, and continuing our urban area pretreatment program for controlling industrial sources.

This Mayor and this City Council have shown their resolve to be good stewards of the environment. That is why I am here with Mayor Murphy to add my support to the

recommendations of the EPA and Regional Board Staff that the modified permit be granted to the City of San Diego.

As was discussed by EPA staff, the draft permit contains modifications authorized under 301(h) of the Clean Water Act. Such modifications have come to be known as "waivers". Unfortunately the word "waiver" gives the connotation that it is an escape clause or a loophole in the Clean Water Act, when in fact a modified permit is in complete compliance with the Act and assures that the discharge is receiving full treatment at a level that is protective of the environment. The modifications are not meant to be loopholes, but rather are an integral part of the Clean Water Act that recognize that in some cases secondary treatment may not be necessary to protect the environment. Each modified permit is taken on a case by case basis and is very site specific. A modified permit for one discharger does not have any bearing or precedence on the merits of a modified permit for another discharger. Each must be evaluated on its own merits and approved only after a rigorous technical evaluation.

There are nine findings that must be made for a discharger to receive a modified permit. Among these are that "the discharge meets State water quality standards." We are pleased that the EPA, through a rigorous technical evaluation, has found that we meet all nine criteria including the fact that our discharge meets State water quality standards. Because the EPA has found that the Point Loma Wastewater Treatment Plant meets all of these nine criteria, we support the recommendation of the EPA that this modified permit should be granted.

The Mayor and the City Council have shown their resolve to do what is necessary to ensure public health, preserve the environment and comply with the law. We support

the recommendations of your staff and look forward to continuing to work with you in the future.

**Presentation of Scott Tulloch**  
**RWQCB**  
**March 13, 2002**

Good morning Chairman Minan, Ms. Strauss and members of the board. I am Scott Tulloch and I am the Director of the Metropolitan Wastewater Department of the City of San Diego. Also speaking for the City of San Diego today are the Honorable Mayor Dick Murphy and Councilmember Scott Peters. In addition Alan Langworthy, Deputy Director of our Environmental Monitoring and Technical Services Division, will be available to assist in answering any questions you may have.

I would like to begin my remarks by expressing the city's support for the EPA's tentative decision to renew the modified NPDES permit for the discharge through the Pt Loma Ocean Outfall. After a thorough review, the EPA's technical staff and scientific consultants have determined that the present treatment system complies with all state and federal standards and is protective of the public health and environment. Additionally, it meets the statutory requirements of section 301(h) of the Clean Water Act.

The draft permit that has been recommended by the EPA and your staff contains modifications to only two parameters, the Total Suspended Solids removal and Biochemical Oxygen Demand removal requirements, as authorized by the Clean Water Act. In the case of these two constituents the draft permit contains limits much more restrictive than are typically found in a modified NPDES permit. The State of California Ocean Plan contains Total Suspended Solids requirements and addresses the Biochemical Oxygen Demand issue through limitations on



oxygen depletion in the receiving water. The Pt Loma discharge is well within complete compliance with these state standards.

All other parameters and permit conditions are either the same or more stringent than a full secondary treatment permit. Toxics control is achieved by means of industrial source control and household hazardous waste programs. Because of the modified permit, San Diego is required to operate an enhanced toxics control program and by this means has demonstrated secondary equivalency with regard to toxics. The discharge has consistently achieved 100% compliance with all state and federal requirements and has had and will continue to have a significantly enhanced monitoring program to assure compliance in the future. This facility has won seven consecutive gold awards from the Association of Metropolitan Sewerage Agencies for this high level of compliance.

The combination of excellent toxics control, chemically assisted advanced primary treatment, a long deep ocean outfall and an extensive monitoring program has ensured that the Pt Loma discharge complies with all standards and protects the public health and environment.

In summary the US EPA and State RWQCB staff thoroughly reviewed the Pt Loma discharge and recommended a tentative decision and draft permit that confirms that there is no significant impact on the ocean and that the public health and environment are protected. The city concurs with this finding and agrees that the requirements of this permit will ensure continued protection in the future.



2025 E. Harbor Drive  
San Diego, CA 92113-2123  
(619) 595-5025  
Fax: (619) 652-5352

SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

2002 MAR 11 PM 1:28

March 6, 2002

Mr. John Robertus  
Executive Officer  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

**Subject: Tentative Order No. R-92002-0025, NPDES Permit No. CA0107409 for the City of San Diego – Wastewater Treatment Plant Discharge to the Pacific Ocean**

Dear Mr. Robertus:

CP Kelco strongly supports the U.S. Environmental Protection Agency's (EPA) Tentative Decision to grant the City of San Diego a modified National Pollutant Discharge Elimination System (NPDES) permit consistent with section 301(h) of the Clean Water Act (CWA), and to request the California Regional Water Quality Control Board (RWQCB) adopt the EPA's recommendations.

The EPA's tentative approval of modified standards suggests that the propagated balance of our ocean's indigenous population is not interfered with or disturbed by, the discharge dispersed to the waters through the Point Loma Ocean Outfall.

Scientific evidence clearly shows the City of San Diego's wastewater treatment is more than sufficient to protect the marine environment and the health of all San Diegans. As a member organization of the SAFE Treatment Coalition, CP Kelco took the extraordinary step of conducting an independent review of the City's monitoring data and analysis, which is contained in the Discharge Effects Science Panel report (January, 2002). Both, SAFE's independent report and, more significantly, the EPA's tentative decision, consistently support the City of San Diego's application. Further, they demonstrate any demand for a higher level of treatment at the plant, despite already being shown to be unnecessary, would impose a grossly unfair economic burden on the City, its participating agencies, and the nearly two million affected ratepayers.

The permit proposed by the EPA provides for full protection of the public health and environment. By tentatively issuing this permit, the EPA and the RWQCB recognize what



2025 E. Harbor Drive  
San Diego, CA 92113-2123  
(619) 595-5025  
Fax: (619) 652-5352

all-available scientific information confirms -- our current system causes no environmental harm. Our San Diego waters are safe for humans and marine life.

Again, I support the EPA's tentative decision and urge you to do the same.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. J. Currie".

Andrew Currie  
Plant Manager

49TH DISTRICT, CALIFORNIA

COMMITTEES:  
INTERNATIONAL RELATIONS  
JUDICIARY  
SMALL BUSINESS

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0548**

1725 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-3906

DISTRICT OFFICES:  
100 AVENIDA PRESIDIO, SUITE A  
SAN CLEMENTE, CA 92672  
(949) 496-2943

NORTH COUNTY GOVERNMENT CENTER  
ANNEX BUILDING, SUITE 100  
325 SOUTH MELBORE  
VISTA, CA 92083  
(760) 940-4380

March 12, 2002

John Robertus  
Executive Officer  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Dear Mr. Robertus:

I am writing to support the U.S. Environmental Protection Agency's (EPA) Tentative Decision to grant the City of San Diego a modified National Pollutant Discharge Elimination System (NPDES) permit consistent with section 301(h) of the Clean Water Act (CWA), and to request the California Regional Water Quality Control Board (RWQCB) adopt the EPA's recommendations.

Scientific evidence has shown the City of San Diego's wastewater treatment is more than sufficient to protect the marine environment and the health of all San Diegans. The EPA's tentative decision, consistently supports the City of San Diego's application, and demonstrates any demand for a higher level of treatment at the plant, despite already being unnecessary, would impose a grossly unfair economic burden on the City, its participating agencies, and the nearly two million affected ratepayers.

Regarding the applicability of 33 U.S.C. § 1311(j)(5) to this and future NPDES permits, the entire San Diego delegation sent a letter in collaboration with San Diego Mayor Dick Murphy and Metro Commission chair Jay Goldby, to EPA Administrator Christine Whitman, regarding our consensus interpretation that the 1994 Ocean Pollution Reduction Act - 33 U.S.C. § 1311(j)(5) - is not applicable.

In closing, the permit proposed by the EPA provides for full protection of the public health and environment. By tentatively issuing this permit, the EPA and the RWQCB recognize what all-available scientific information confirms - San Diego's current treatment and discharge system causes no environmental harm, and San Diego's waters are safe for humans and marine life.

Again, I support the EPA's tentative decision and urge you to do the same.

Sincerely,



Darrell Issa  
Member of Congress

STATE CAPITOL, ROOM 5050  
SACRAMENTO, CA 95814-4800  
TEL (916) 445-3952  
FAX (916) 327-2188

DISTRICT OFFICE  
1557 COLUMBIA STREET  
SAN DIEGO, CA 92101-2834  
TEL (619) 645-3090  
FAX (619) 645-3094

SENATOR.ALPERT@SUN.CA.GOV

# California State Senate

SENATOR  
DEDE ALPERT

THIRTY-NINTH SENATORIAL DISTRICT

CHAIR

SENATE APPROPRIATIONS COMMITTEE

COMMITTEES  
CHAIR, APPROPRIATIONS  
AGRICULTURE AND  
WATER RESOURCES  
EDUCATION  
ELECTIONS AND  
REAPPORTIONMENT  
NATURAL RESOURCES AND  
WILDLIFE  
REVENUE AND TAXATION

SELECT COMMITTEES  
CHAIR, FAMILY, CHILD AND  
YOUTH DEVELOPMENT  
JUVENILE JUSTICE

JOINT COMMITTEES  
CHAIR, MASTER PLAN FOR  
EDUCATION - KINDERGARTEN  
THROUGH UNIVERSITY

VIA FACSIMILE

March 11, 2002

Mr. John Robertus, Executive Officer  
California Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Subject: Tentative Order No. R-92002-0025, NPDES Permit No. CAO 107409  
City of San Diego - Wastewater Treatment Plant Discharge to the Pacific Ocean

Dear Mr. Robertus: *John*

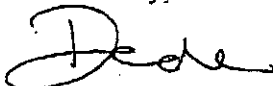
As the member of the California Senate who represents most of the City of San Diego, I am pleased to address the Regional Water Quality Control Board. I would like to voice my support of the U.S. Environmental Protection Agency's tentative decision to grant the City of San Diego a modified National Pollutant Discharge Elimination System permit. This permit is consistent with section 301(h) of the Clean Water Act.

Scientific evidence has confirmed that the City of San Diego's wastewater treatment is more than sufficient to protect the marine environment and the health of all San Diegans. The EPA's tentative decision consistently supports the City of San Diego's application. Further, it recognizes any demand for a higher level of treatment at the plant would impose a grossly unfair economic burden on the City, its participating agencies, and the nearly two million affected ratepayers.

The permit proposed by the EPA provides for full protection of the public health and environment. By tentatively issuing this permit, the EPA and the RWQCB recognize what all available scientific information confirms - San Diego's current treatment and discharge system causes no environmental harm.

I respectfully request the Regional Water Quality Control Board adopt the EPA's recommendations.

Sincerely,



SENATOR DEDE ALPERT  
39<sup>th</sup> District

*3/12/02*

*Brian Kelley*

*pls include in record*

*of pt. from hearing*

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

March 11, 2002

John H. Robertus  
Executive Officer  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, # 100  
San Diego, CA 92123

Subject: Tentative Order No. R-92002-0025, NPDES Permit No. CA0107409  
for the City of San Diego – Wastewater Treatment Plant Discharge to  
the Pacific Ocean

Dear Mr. Robertus:

We strongly support the U.S. Environmental Protection Agency's (EPA) Tentative Decision to grant the City of San Diego a modified National Pollutant Discharge Elimination System (NPDES) permit consistent with section 301(h) of the Clean Water Act (CWA), and to request the California Regional Water Quality Control Board (RWQCB) adopt the EPA's recommendations.

The EPA's tentative approval of modified standards suggests that the propagated balance of our ocean's indigenous population is not interfered with or disturbed by, the discharge dispersed to the waters through the Point Loma Ocean Outfall.

Scientific evidence clearly shows the City of San Diego's wastewater treatment is more than sufficient to protect the marine environment and the health of all San Diegans. The EPA's tentative decision, consistently supports the City of San Diego's application, and demonstrates any demand for a higher level of treatment at the plant, despite already being shown to be unnecessary, would impose a grossly unfair economic burden on the City, its participating agencies, and the nearly two million affected ratepayers.


John H. Robertus  
March 11, 2002  
Page 2


Regarding the applicability of 33 U.S.C. § 1311(j)(5) to this and future NPDES permits, we sent a letter in collaboration with San Diego Mayor Dick Murphy and Metro Commission chair Jay Goldby, to EPA Administrator Christine Whitman. Please refer to the attached letter of September 12, 2001, regarding our consensus interpretation that the 1994 Ocean Pollution Reduction Act -- 33 U.S.C. § 1311(j)(5) -- is not applicable.

In closing, the permit proposed by the EPA provides for full protection of the public health and environment. By tentatively issuing this permit, the EPA and the RWQCB recognize what all-available scientific information confirms -- San Diego's current treatment and discharge system causes no environmental harm, and San Diego's waters are safe for humans and marine life.

Again, we support the EPA's tentative decision and urge you to do the same.

Sincerely,

  
BOB FILNER  
Member of Congress

  
SUSAN DAVIS  
Member of Congress

BF/mn  
2069659

STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0078  
(916) 319-2078  
FAX (916) 319-2178

DISTRICT ADDRESS  
1350 FRONT STREET, SUITE 6013  
SAN DIEGO, CA 92101  
(619) 234-7878  
FAX (619) 233-0078

assemblymemberwayne@assembly.ca.gov

*OK 3/14 Donat N.*  
*This FAX time/date is too late for*  
**Assembly**  
*inclusion in the*  
**California Legislature**  
*record of the 80th State Permit Hearing*

**HOWARD WAYNE**  
ASSEMBLYMEMBER, 78TH DISTRICT

CHAIR:  
NATURAL RESOURCES  
SELECT COMMITTEE ON  
BIOTECHNOLOGY  
MEMBER:  
HEALTH  
HOUSING AND COMMUNITY  
DEVELOPMENT  
JUDICIARY  
WATER, PARKS AND WILDLIFE

March 13, 2002



Mr. John Robertus, Executive Officer  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Subject: Tentative Order No. R-92002-0025, NPDES Permit No. CAO 107409 for the City of San Diego - Wastewater Treatment Plant Discharge to the Pacific Ocean

Dear Mr. Robertus:

I write in support of the U.S. Environmental Protection Agency's (EPA) Tentative Decision to grant the City of San Diego a modified National Pollutant Discharge Elimination System (NPDES) permit consistent with section 301(h) of the Clean Water Act (CWA). I urge the California Regional Water Quality Control Board's utmost consideration to support the adoption the EPA's recommendations.

Scientific evidence demonstrates that the City of San Diego's wastewater treatment is sufficient to protect the marine environment and the health of San Diegans. The EPA's tentative decision consistently supports the City of San Diego's application and demonstrates that a demand for a higher level of treatment at the plant is unnecessary, and would impose an unfair economic burden on the City, its participating agencies, and the nearly two million affected ratepayers.

The permit proposed by the EPA provides for the protection of public health and the environment. I respectfully request that the Regional Board support of EPA's tentative decision. If I may be of any assistance with this matter, please do not hesitate to call me at 619-234-7878.

Sincerely,

*Howard Wayne*

HOWARD WAYNE  
Assemblymember  
78<sup>th</sup> District

HW/gh







JR  
3/12/02  
Brian Kelley  
the include in the  
hearing record for Pt.  
Jana permit.

March 6, 2002

Mr. John Robertus  
Executive Officer  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

2002 MAR 11 P 1:11  
SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

Subject: Tentative Order No. R-92002-0025, NPDES Permit No. CA0107409 for the City of San Diego  
Wastewater Treatment Plant Discharge to the Pacific Ocean

Dear Mr. Robertus:

The Industrial Environmental Association strongly supports the U.S. Environmental Protection Agency's (EPA) Tentative Decision to grant the City of San Diego a modified National Pollutant Discharge Elimination System (NPDES) permit consistent with section 301(h) of the Clean Water Act (CWA), and to request the California Regional Water Quality Control Board (RWQCB) adopt the EPA's recommendations.

The EPA's tentative approval of modified standards suggests that the propagated balance of our ocean's indigenous population is not interfered with or disturbed by, the discharge dispersed to the waters through the Point Loma Ocean Outfall.

Scientific evidence clearly shows the City of San Diego's wastewater treatment is more than sufficient to protect the marine environment and the health of all San Diegans. The SAFE Treatment Coalition took the extraordinary step of conducting an independent review of the City's monitoring data and analysis, which is contained in the Discharge Effects Science Panel report (January, 2002). Both, SAFE's independent report and, more significantly, the EPA's tentative decision, consistently support the City of San Diego's application. Further, they demonstrate any demand for a higher level of treatment at the plant, despite already being shown to be unnecessary, would impose a grossly unfair economic burden on the City, its participating agencies, and the nearly two million affected ratepayers.

The permit proposed by the EPA provides for full protection of the public health and environment. By tentatively issuing this permit, the EPA and the RWQCB recognize what all-available scientific information confirms – our current system causes no environmental harm. Our San Diego waters are safe for humans and marine life.

Again, I support the EPA's tentative decision and urge you to do the same.

Sincerely,

Patti Krebs  
Executive Director



# GIBSON, DUNN & CRUTCHER LLP

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
INCLUDING PROFESSIONAL CORPORATIONS

333 South Grand Avenue Los Angeles, California 90071-3197

(213) 229-7000 (213) 229-7520 Fax

www.gibsondunn.com

tmchenry@gibsondunn.com

March 12, 2002

Direct Dial  
(213) 229-7135

Client No.  
R 43308-00001

Mr. John Robertus  
Executive Officer  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Re: *Tentative Order No. R-92002-0025, NPDES Permit No. CA0107409 for  
the City of San Diego – Wastewater Treatment Plant Discharge to the  
Pacific Ocean*

Dear Mr. Robertus:

These comments are submitted on behalf of International Specialty Products ("ISP"). ISP owns and operates facilities in the City of San Diego which use the wastewater treatment system for their manufacturing processes.

ISP supports the U.S. Environmental Protection Agency's ("EPA") Tentative Decision to grant the City of San Diego a modified National Pollutant Discharge Elimination System permit consistent with section 301(h) of the Clean Water Act and to request the California Regional Water Quality Control Board ("Regional Board") to adopt the EPA's recommendations.

ISP also fully supports the comments of the SAFE Treatment Coalition ("SAFE") with regard to the contents of the Tentative Decision and the draft discharge and monitoring permits. Scientific evidence clearly shows the City of San Diego's wastewater treatment system is more than sufficient to protect the marine environment and the health of all San Diegans. As a member organization of SAFE, ISP conducted an independent review of the City's monitoring data and analysis, which is contained in the Discharge Effects Science Panel report (January, 2002). Both SAFE's independent report and, more significantly, the EPA's Tentative Decision, consistently support the City of San Diego's application. Further, they demonstrate that any demand for a higher level of treatment at the plant, despite already being shown to be unnecessary, would

GIBSON, DUNN & CRUTCHER LLP

March 12, 2002

Page 2

impose a grossly unfair economic burden on the City, its participating agencies, and the nearly two million affected ratepayers including ISP.

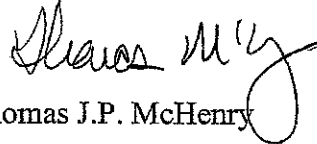
Further, ISP strongly supports the following revision of Footnote No. 1 on page 1 of the Tentative Decision in order to clarify EPA's intent and to avoid further litigation and uncertainty:

The EPA recognizes that there is a dispute between EPA and the City of San Diego over whether Section 301(j)(5) governs the renewal of the City's permit in perpetuity. Since the discharge limitations in this permit conform to the technical limits of 301(j)(5), this permit does not decide the legal issue of whether 301(j)(5) applies to the renewal of the City's permit in perpetuity.

It is clear that because the City's application conforms to the technical limitations of the Ocean Pollution Reduction Act of 1994 ("OPRA"), it is unnecessary to decide the continuing or perpetual application of OPRA. Both sides simply desire to preserve their mutual rights as to the continuing applicability issue. To ensure that both positions are preserved against any claim of waiver, the existing footnote should be revised as suggested above. With this clarification, the revised footnote ensures no preemptive or preclusive effect from the issuance of this permit.

Again, ISP supports the EPA's Tentative Decision and urges you to do the same.

Sincerely,



Thomas J.P. McHenry

TJM/gdm

OH

# Metro Commission

*"Effectively Addressing Regional Wastewater Issues"*

City of Chula Vista  
City of Coronado  
City of Del Mar  
City of El Cajon  
City of Imperial Beach  
City of La Mesa

City of Lemon Grove  
City of National City  
City of Poway  
County of San Diego  
Otay Water District  
Padre Dam MWD

March 1, 2002

Regional Water Quality Control Board  
Attention: Mr. David Hanson  
9174 Sky Park Court  
San Diego, California 92123

Dear Mr. Hanson:

Enclosed for your record are Resolutions from both the Metro Commission and Joint Powers Authority regarding the waiver decision, adopted at our meeting of February 22, 2002.

If you have any questions, I can be reached at (619) 258-4720.

Sincerely,



Teri Basta  
Administrative Assistant

tb

SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD  
2002 MAR -4 P 12:51



# Metro Commission

City of Chula Vista  
City of Coronado  
City of Del Mar  
City of El Cajon  
City of Imperial Beach  
City of La Mesa

*"Effectively Addressing Regional Wastewater  
Issues"*

City of Lemon Grove  
City of National City  
City of Poway  
County of San Diego  
Otay Water District  
Padre Dam MWD

## RESOLUTION 2002-01

### **RESOLUTION OF THE SAN DIEGO METRO COMMISSION ENDORING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S TENTATIVE DECISION FOR THE NPDES PERMIT FOR THE CITY OF SAN DIEGO'S POINT LOMA WASTEWATER TREATMENT PLANT DISCHARGE TO THE PACIFIC OCEAN THROUGH THE POINT LOMA OCEAN OUTFALL**

WHEREAS, on February 8, 2002, the United States Environmental Protection Agency issued Tentative Order No. R-92002-0025, NPDES Permit No. CA0107409 for the City of San Diego, and

WHEREAS, this Tentative Order was based on careful review by the Environmental Protection Agency of all available scientific evidence which indicates that the current system of treatment performed at the Point Loma Wastewater Treatment Plant causes no environmental harm to the ocean or shoreline environments, and

WHEREAS, the Environmental Protection Agency's evaluation of the current system of wastewater treatment found that this system fully protects the environment and the public health, and

WHEREAS, the NPDES permit proposed by the Environmental Protection Agency provides full protection of the public health and environment, and

WHEREAS, the expenditures necessary to upgrade the plant to an unneeded and unwarranted level of secondary treatment would impose an unnecessary financial burden on the rate payers of the participating agencies of the Metropolitan sewerage system, and

WHEREAS, it is the responsibility of the San Diego Metro Commission to proactively address wastewater issues in the San Diego region.

NOW THEREFORE, BE IT RESOLVED that for and on behalf of the citizens of this region, the San Diego Metro Commission declares their endorsement of and support for the Tentative Order issued by the Environmental Protection Agency for an NPDES permit for the City of San Diego's Point Loma Wastewater Treatment Plant to continue its discharge of treated wastewater to the Pacific Ocean at its present level of treatment.

PASSED AND ADOPTED at a regular meeting of the San Diego Metro Commission held on the 22<sup>nd</sup> day of February 2002, by the following vote, to wit:

AYES:	Cities of Coronado, El Cajon, La Mesa, Poway, County of San Diego, Padre Dam MWD
NOES:	None
ABSENT:	City of Lemon Grove, Otay Water District
ABSTAIN:	Cities of Chula Vista, Del Mar, Imperial Beach, National City

  
\_\_\_\_\_  
Jay Goldby, Chair

**RESOLUTION 2002-01**

**RESOLUTION OF THE  
METRO WASTEWATER JOINT POWERS AUTHORITY  
ENDORISING THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY'S  
TENTATIVE DECISION FOR THE NPDES PERMIT FOR THE  
CITY OF SAN DIEGO'S POINT LOMA WASTEWATER  
TREATMENT PLANT DISCHARGE TO THE  
PACIFIC OCEAN THROUGH THE POINT LOMA OCEAN OUTFALL**

WHEREAS, on February 8, 2002, the United States Environmental Protection Agency issued Tentative Order No. R-92002-0025, NPDES Permit No. CA0107409 for the City of San Diego, and

WHEREAS, this Tentative Order was based on careful review by the Environmental Protection Agency of all available scientific evidence which indicates that the current system of treatment performed at the Point Loma Wastewater Treatment Plant causes no environmental harm to the ocean or shoreline environments, and

WHEREAS, the Environmental Protection Agency's evaluation of the current system of wastewater treatment found that this system fully protects the environment and the public health, and

WHEREAS, the NPDES permit proposed by the Environmental Protection Agency provides full protection of the public health and environment, and

WHEREAS, the expenditures necessary to upgrade the plant to an unneeded and unwarranted level of secondary treatment would impose an unnecessary financial burden on the rate payers of the participating agencies of the Metropolitan sewerage system, and

WHEREAS, it is the responsibility of the Metro Wastewater Joint Powers Authority to proactively address wastewater issues in the San Diego region.

NOW THEREFORE, BE IT RESOLVED that for and on behalf of the citizens of this region, the Metro Wastewater Joint Powers Authority declares their endorsement of and support for the Tentative Order issued by the Environmental Protection Agency for an NPDES permit for the City of San Diego's Point Loma Wastewater Treatment Plant to continue its discharge of treated wastewater to the Pacific Ocean at its present level of treatment.



PASSED AND ADOPTED at a regular meeting of the Metro Wastewater Joint Powers Authority held on the 22<sup>nd</sup> day of February 2002, by the following vote, to wit:

AYES:	Cities of Coronado, El Cajon, La Mesa, Poway, County of San Diego, Padre Dam MWD
NOES:	None
ABSENT:	City of Lemon Grove
ABSTAIN:	Cities of Del Mar, Imperial Beach

  
\_\_\_\_\_  
Jay Goldby, Chair

RESOLUTION NO. 2002-03

*JR 3/12*  
*Doned H*  
*plc included in the record of the hearing on the Pt. Loma NPDES permit (original copy)*

A RESOLUTION OF THE METRO WASTEWATER JPA  
ENDORISING THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S TENTATIVE  
DECISION FOR THE NPDES PERMIT FOR THE CITY OF SAN DIEGO'S POINT  
LOMA WASTEWATER TREATMENT PLANT DISCHARGE TO THE PACIFIC OCEAN  
THROUGH THE POINT LOMA OCEAN OUTFALL

WHEREAS, on February 8, 2002, the United States Environmental Protection Agency issued Tentative Order No. R-92002-0025, NPDES Permit No. CA0107409 for the City of San Diego; and

WHEREAS, this tentative order was based on careful review by the Environmental Protection Agency of all available scientific evidence which indicates that the current system of treatment performed at the Point Loma Wastewater Treatment Plant causes no environmental harm to the ocean or shoreline environments; and

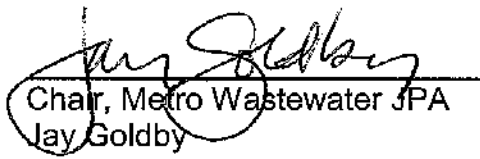
WHEREAS, the Environmental Protection Agency's evaluation of the current system of wastewater treatment found that this system fully protects the environment and the public health; and

WHEREAS, the NPDES Permit proposed by the Environmental Protection Agency provides full protection of the public health and environmental; and

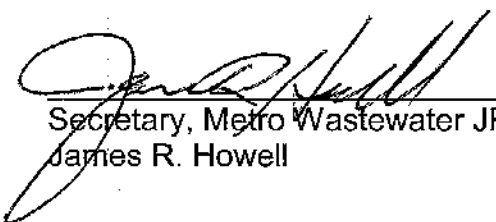
WHEREAS, the expenditures necessary to upgrade the plant to an unneeded and unwarranted level of Secondary Treatment would impose unnecessary financial burdens on the ratepayers of the Participating Agencies of the Metropolitan Sewerage System,

NOW, THEREFORE, BE IT RESOLVED, that for and on the behalf of the citizens of Poway, the City Council of the City of Poway hereby declare their endorsement of and support for the Tentative Order issued by the Environmental Protection Agency for an NPDES Permit for the City of San Diego's Point Loma Wastewater Treatment Plant to continue its discharge of treated wastewater to the Pacific Ocean at its present level of treatment.

PASSED, ADOPTED AND APPROVED by the Metro Wastewater JPA Committee at a regular meeting this 22nd day of February, 2002.

  
Chair, Metro Wastewater JPA  
Jay Goldby

ATTEST:

  
Secretary, Metro Wastewater JPA  
James R. Howell

**OCEAN OUTFALL GROUP (OOG)**

Jan D. Vandersloot, MD, Director

2221 E16 Street

Newport Beach, CA 92663

Phone: (949) 548-6326

Fax: (714) 848-6643

Email: JonV3@aol.com

*3/14*  
*Donal H.*  
*This letter should be*  
*included in the record,*  
*if the hearing*  
*for the pt. Loma permit.*

March 11, 2002

John H. Robertus, Executive Officer  
California Regional Water Quality Control Board,  
San Diego, Region 9  
9174 Sky Park Court, Suite 100  
San Diego, California, 92123

Re: Board Meeting March 13, 2002

Agenda Item # 7. JOINT PUBLIC HEARING: NPDES Permit Renewal, City of  
San Diego, E.W. Blom Point Loma Wastewater Treatment Plant and Ocean  
Outfall. (Tentative Order No. R9-2002-0025, Draft NPDES Permit No.  
CA0107409)

Please Oppose Renewal of The San Diego 301(h) Waiver

Sent By Fax to (858) 571-6972

Dear Mr. Robertus, and San Diego Regional Water Quality Control Board  
Members,

My name is Jan Vandersloot, director of the Ocean Outfall Group (OOG), which is dedicated to ending the 301(h) waiver held by the Orange County Sanitation District. We have over 200 members and have been working very hard for over a year to get rid of the Orange County waiver. Our motto is "Do Us a Favor, Get Rid of the Waiver"

It is thus with considerable alarm that we find the state and federal regulatory agencies poised to approve the San Diego waiver. This is a mistake. It will set a precedent to approve the waivers that are still held in California, including Orange County, Goleta, and Morro Bay. These waivers were supposed to be temporary, with 5-year expiration dates. Public concern is strong enough that clean water and a clean ocean should be a given. We should not saddle our children with the burden of antiquated policies that condone inadequate sewage treatment. Our modern advanced society has the tools to do adequate sewage treatment before it is released into the ocean. We should use those tools.

I would look with considerable skepticism at the science of the sewage plume that was developed by the San Diego sanitation district. If it is anything like the science

**OCEAN OUTFALL GROUP**

developed by the Orange County Sanitation District, you will find it heavily biased towards retaining the waiver.

Of course there will be a cost to eliminating the waiver. However, there are only 36 out of 16,000 sanitation districts in the entire United States that still have the waiver. This means that 99.75% of all other sanitation districts pay the cost of full secondary treatment. Why should San Diego be any different?

Therefore, I respectfully request you deny the waiver application. If there is a plausible reason to treat San Diego differently from nearly every other sanitation district in the nation, please spell it out clearly so that this waiver will not be used as an excuse by Orange County to move ahead with its waiver request. However, we are already seeing a ripple effect from EPA's announcement that it intends to approve the San Diego waiver. The OCSD General Manager has already cited the EPA action as a reason for the OCSD Board of Directors to approve an extension of the Orange County waiver. This is precisely what we feared. The San Diego waiver will be used to justify the other waivers.

Here in Orange County, the public is becoming aroused to the detrimental effects of the waiver, but your action in San Diego may very well undermine our efforts. It's a matter of education. My guess is that most people in San Diego have not heard of the waiver. If they did, they would oppose it. People want a clean ocean. The waivers do not give us a clean ocean. Please "Do Us a Favor, Get Rid of the Waiver".

Thank you.

Sincerely,

  
Jan D. Vandersloot, MD

Jeffrey R. Stevens  
2307 16<sup>th</sup> St.  
Newport Beach, CA 92663  
jeffstevens@adelphia.net  
fax: (949) 548-2299

March 12, 2002  
John H. Robertus, Executive Officer  
California Regional Water Quality Control Board,  
San Diego, Region 9  
9174 Sky Park Court, Suite 100  
San Diego, California, 92123

Re: Board Meeting March 13, 2002  
Agenda Item # 7. JOINT PUBLIC HEARING: NPDES Permit Renewal,  
City of San Diego, E.W. Blom Point Loma Wastewater Treatment Plant and Ocean Outfall.  
(Tentative Order No. R9-2002-0025, Draft NPDES Permit No.  
CA0107409)

Please Oppose Renewal of The San Diego 301(h) Waiver  
Sent By Fax to (858) 571-6972

Dear Mr. Robertus, and San Diego Regional Water Quality Control Board Members,

My name is Jeff Stevens of the Ocean Outfall Group (OOG), which is dedicated to ending the 301(h) waiver held by the Orange County Sanitation District. We have over 200 members and have been working very hard for over a year to get rid of the Orange County waiver. Our motto is "Do Us a Favor, Get Rid of the Waiver"

It is thus with considerable alarm that we find the state and federal regulatory agencies poised to approve the San Diego waiver. This is a mistake. It will set a precedent to approve the waivers that are still held in California, including Orange County, Goleta, and Morro Bay. These waivers were supposed to be temporary, with 5-year expiration dates. Public concern is strong enough that clean water and a clean ocean should be a given. We should not saddle our children with the burden of antiquated policies that condone inadequate sewage treatment. Our modern advanced society has the tools to do adequate sewage treatment before it is released into the ocean. We should use those tools.

I would look with considerable skepticism at the science of the sewage plume that was developed by the San Diego sanitation district. If it is anything like the science developed by the Orange County Sanitation District, you will find it heavily biased towards retaining the waiver.

Of course there will be a cost to eliminating the waiver. However, there are only 36 out of 16,000 sanitation districts in the entire United States that still have the waiver. This means that 99.75% of all other sanitation districts pay the cost of full secondary treatment. Why should San Diego be any different?

Therefore, I respectfully request you deny the waiver application. If there is a plausible reason to treat San Diego differently from nearly every other sanitation district in the nation, please spell it out clearly so that this waiver will not be used as an excuse by Orange County to move ahead with its waiver request. However, we are already seeing a ripple effect from EPA's announcement that it intends to approve the San Diego waiver. The OCSB General Manager has already cited the EPA action as a reason for the OCSB Board of Directors to approve an extension of the Orange County waiver. This is precisely what we feared. The San Diego waiver will be used to justify the other waivers.

jeffstevens@adelphia.net

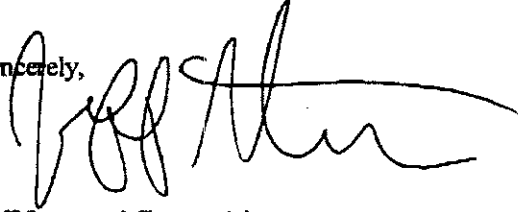
*JR 3-12-02*  
*Brian Kelley*  
*ph include in record*  
*of Hearing on Pt Loma*

March 12, 2002

Page 2

Here in Orange County, the public is becoming aroused to the detrimental effects of the waiver, but your action in San Diego may very well undermine our efforts. It's a matter of education. My guess is that most people in San Diego have not heard of the waiver. If they did, they would oppose it. People want a clean ocean. The waivers do not give us a clean ocean. Please "Do Us a Favor, Get Rid of the Waiver".

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Stevens", with a long horizontal flourish extending to the right.

Jeff Stevens, MLA, and family



Every Drop Counts!

## Padre Dam Municipal Water District

10887 Woodside Avenue / P.O. Box 719003  
Santee, CA 92072-9003  
Telephone: 619-448-3111  
FAX Administration: 619-449-9469  
FAX Operations: 619-449-9537  
<http://www.PadreDam.org>  
E-mail: [Customer@Padre.org](mailto:Customer@Padre.org)

March 11, 2002

Mr. David Hanson  
California Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Subject: Tentative Order No. R9-2002-0025, NPDES Permit No. CA0107409 for the City of San Diego, E. W. Blom Point Loma Metropolitan Wastewater Treatment Plant Discharge to the Pacific Ocean through the Point Loma Ocean Outfall.

Dear Mr. Hanson:

Padre Dam Municipal Water District fully supports and recommends approval of the subject order and permit.

Padre Dam Municipal Water District contracts with the City of San Diego for treatment and disposal of wastewater and is currently relying on their services for flows of approximately 3 million gallons per day. In addition, we hold an NPDES permit and treat 2 million gallons per day of municipal wastewater at the Padre Dam Water Recycling Facility. In exercising our privileges under our permit, we are very aware of the high level of professionalism, scientific analysis, and scrutiny that go into analyzing permit applications and recommending discharge requirements. In our opinion, the requirements of the permit for the Blom Plant and Point Loma Outfall are commensurate with the information regarding the impacts to the environment from the discharge.

Thank you for this opportunity to comment.

Sincerely,

Augie Caires  
General Manager

cc: Robyn Stuber, USEPA

### Board of Directors:

Jesse T. Dixon  
Division 1  
Augie Scalzitti  
Division 2  
Andrew J. Menshek  
Division 3  
Lex Boswell  
Division 4  
Dan McMillan  
Division 5

2002 MAR 12 A 11:23  
SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

RANDY "DUKE" CUNNINGHAM  
51ST DISTRICT, CALIFORNIA

## COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:  
DEFENSE

LABOR, HEALTH AND HUMAN  
SERVICES, AND EDUCATION

DISTRICT OF COLUMBIA

PERMANENT SELECT COMMITTEE  
ON INTELLIGENCE

ASSISTANT MAJORITY WHIP



Congress of the United States  
House of Representatives  
Washington, DC 20515-0551  
March 11, 2002

PLEASE RESPOND TO:  
☐ 2350 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-0551  
(202) 225-5452  
(202) 225-2558 FAX

☐ 613 WEST VALLEY PARKWAY  
SUITE 320  
ESCONDIDO, CA 92025  
(760) 737-8438  
(760) 737-9132 FAX

E-MAIL VIA WEB SITE:  
<http://www.house.gov/cunningham/>

Mr. John Robertus  
Executive Officer  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Subject: Tentative Order No. R-92002-0025, NPDES Permit No. CA0107409  
for the City of San Diego – Wastewater Treatment Plant Discharge to the  
Pacific Ocean

Dear Mr. Robertus:

I am writing to support the U.S. Environmental Protection Agency's (EPA) Tentative Decision to grant the City of San Diego a modified National Pollutant Discharge Elimination System (NPDES) permit consistent with section 301(h) of the Clean Water Act (CWA), and to request the California Regional Water Quality Control Board (RWQCB) adopt the EPA's recommendations.

Scientific evidence has shown the City of San Diego's wastewater treatment is more than sufficient to protect the marine environment and the health of all San Diegans. The EPA's tentative decision, consistently supports the City of San Diego's application, and demonstrates any demand for a higher level of treatment at the plant, despite already being unnecessary, would impose a grossly unfair economic burden on the City, its participating agencies, and the nearly two million affected ratepayers.

Regarding the applicability of 33 U.S.C. § 1311(j)(5) to this and future NPDES permits, the entire San Diego delegation sent a letter in collaboration with San Diego Mayor Dick Murphy and Metro Commission chair Jay Goldby, to EPA Administrator Christine Whitman, regarding our consensus interpretation that the 1994 Ocean Pollution Reduction Act – 33 U.S.C. § 1311(j)(5) – is not applicable.

In closing, the permit proposed by the EPA provides for full protection of the public health and environment. By tentatively issuing this permit, the EPA and the RWQCB recognize what all-available scientific information confirms – San Diego's current treatment and discharge system causes no environmental harm, and San Diego's waters are safe for humans and marine life.

Again, I support the EPA's tentative decision and urge you to do the same.

Sincerely,

*Randy "Duke" Cunningham*  
Randy "Duke" Cunningham  
Member of Congress

RDC/ttc



## S.A.F.E. TREATMENT COALITION

*Safe And Fair Environmental Treatment Coalition*



*3/12  
David H. — please include  
in the hearing record for the Pt. Loma  
NPDES permit today.*

March 13, 2002

Mr. John Robertus  
Executive Officer  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Subject: Tentative Order No. R-92002-0025, NPDES Permit No. CA0107409 for the City of San Diego - Wastewater Treatment Plant Discharge to the Pacific Ocean

Dear Mr. Robertus:

The Safe and Fair Environmental Treatment Coalition (SAFE) strongly supports the U.S. Environmental Protection Agency's (EPA) Tentative Decision to grant the City of San Diego a modified National Pollutant Discharge Elimination System (NPDES) permit consistent with section 301(h) of the Clean Water Act (CWA), and to request the California Regional Water Quality Control Board (RWQCB) adopt the EPA's recommendations.

The SAFE Treatment Coalition is a single issue public coalition of local community groups, businesses, labor, elected officials, scientists and individuals concerned about any effort to force San Diego to a higher level of sewage treatment than other similar cities are required to under the Clean Water Act (see attached Coalition Overview).

The EPA's tentative approval of modified standards suggests the propagated balance of our ocean's indigenous population is not interfered with or disturbed by, the discharge dispersed to the waters through the Point Loma Ocean Outfall. Scientific evidence clearly shows the City of San Diego's wastewater treatment is more than sufficient to protect the marine environment and the health of all San Diegans.

The SAFE Treatment Coalition took the extraordinary step of conducting an independent review of the City's monitoring data and analysis (see attached Discharge Effects Science Panel Report, January, 2002). In summary, the Science Panel found:

- The Point Loma Wastewater Treatment Plant's (PLWTP) permitted discharge does not impact the San Diego shoreline.

Mr. Robertus

March 13, 2002

Page 2

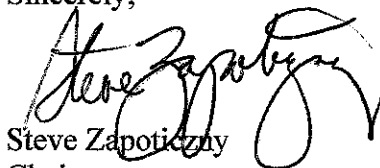
- Secondary treatment standards will not solve or reduce San Diego's beach and bay closures, because the closures appear to be caused by pollution from other sources.
- Extensive monitoring of the City's discharge has not found harmful impacts to the ocean environment.

Both, SAFE's independent report and, more significantly, the EPA's tentative decision, consistently support the City of San Diego's application. Further, they demonstrate any demand for a higher level of treatment at the plant, despite already being shown to be unnecessary, would impose a grossly unfair economic burden on the City, its participating agencies, and the nearly two million affected ratepayers.

The permit proposed by the EPA provides for full protection of the public health and environment. By tentatively issuing this permit, the EPA and the RWQCB recognize what all-available scientific information confirms: San Diego's current system causes no environmental harm, and San Diego's waters are safe for humans and marine life.

Again, I support the EPA's tentative decision and urge you to do the same.

Sincerely,



Steve Zapotichny  
Chair

SAFE Treatment Coalition

# **S.A.F.E. TREATMENT COALITION**

*Safe And Fair Environmental Treatment Coalition*

**BIOCOM**



**DISCHARGE EFFECTS  
of the  
POINT LOMA  
WASTEWATER TREATMENT PLANT  
and  
OCEAN OUTFALL**

**&**

**REVIEW  
of the  
SIERRA CLUB ANALYSIS**

by

**S.A.F.E. TREATMENT COALITION**  
*Discharge Effects Science Panel*

January, 2002

**Discharge Effects of the Point Loma Wastewater Treatment Plant  
and Ocean Outfall, and Review of the Sierra Club Analysis**

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D. Craig Barilotti, Ph.D.....	2
Dale A. Glantz.....	2
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## INTRODUCTION

The Safe and Fair Environmental (SAFE) Treatment Coalition formed the Discharge Effects Science Panel for the purpose of reviewing and advising the SAFE Treatment Coalition's Executive Committee about the discharge effects of the City of San Diego's Point Loma Wastewater Treatment Plant (PLWTP) and Ocean Outfall. The Science Panel consisted of four experts in the field of marine ecology from both academia and professional services.

## BACKGROUND

Since April 2000, the SAFE Treatment Coalition has a five-point position about upgrading the PLWTP to secondary treatment, based on the findings made in the *U.S. EPA v. City of San Diego* litigation, the 1994 Ocean Pollution Reduction Act, and the United States Environmental Protection Agency's 1995 decision to approve the City's secondary treatment waiver. The SAFE Treatment Coalition's position is:

**TABLE I: S.A.F.E. Treatment Coalition Position**

1.	<b>No Harm:</b> Extensive scientific studies and monitoring demonstrate the City's treatment is safe for the ocean environment.
2.	<b>Author's Intent:</b> City's position is consistent with the Federal law's intent as authored by Congressman Filner.
3.	<b>Treat City Equally:</b> City's treatment standards should be the same as other cities with Clean Water Act waivers.
4.	<b>Rate Impact:</b> San Diego metro region sewer rates could increase at least 150 to 300 percent for a \$3 billion upgrade to secondary treatment.
5.	<b>Cost Effectiveness:</b> Higher treatment standards do not address the cause of San Diego's beach and bay closures. Secondary treatment will raise City sewer rates and short change better solutions to beach and bay closures.

Although SAFE's position is based mostly on financial and legal issues, the most important point is that no harm is occurring to the ocean environment. Due to the City of San Diego's recent waiver submittal and the release of the Sierra Club's analysis of the City's monitoring reports, SAFE's Executive Committee convened a panel of marine ecology experts to provide peer review of the Sierra Club's analysis, to review SAFE's position, and to prepare for the EPA's forthcoming public hearing about their Tentative Decision. On May 30, 2001, the SAFE Executive Committee authorized the formation of the Discharge Effects Science Panel to consider the following questions:

**TABLE II: Questions for Discharge Effects Science Panel's Review**

1.	Is the SAFE Treatment Coalition's position supportable based on the evidence by the City of San Diego and the analysis by the Sierra Club?
2.	Are the positions in the Sierra Club's analysis accurate and complete?
3.	Is the City of San Diego taking sufficient actions to determine future impacts and the appropriate amount of mass loading?

**DISCHARGE EFFECTS SCIENCE PANEL MEMBERS**

The SAFE Treatment Coalition is pleased to receive the volunteer participation of the following individuals as Science Panel members based on their expertise in the field of marine ecology, ocean monitoring and testing, and practical expertise with San Diego's kelp beds, which off Point Loma have the same water quality standards as required for human body contact.

- **Paul K. Dayton, Ph.D.**, Professor of Marine Ecology, Scripps Institution of Oceanography

Paul Dayton focuses on coastal habitats, which are some of the most over utilized, stressed, and disturbed areas in the world. His career has been driven by the belief that one must understand nature to protect it, and he has attempted to use analytical techniques of simplification, testing, and synthesis as an approach to understanding community organization. Paul's research specialty is benthic communities and coastal/estuarine environments. He has also been involved in projects focusing on kelp forests, global fisheries, and Antarctic ecosystems. He has devoted considerable time to the United States Marine Mammal Commission and to the University of California Natural System, which maintains approximately 30 reserves. Paul is also a widely sought speaker and he strives to provide sound science to support improved marine conservation policy.

- **Dr. D. Craig Barilotti**, Adjunct Biology Professor, San Diego State University, and Marine Resource Management Consultant, Sea Foam Enterprises.

Craig's professional activities include: Technical Director in the design and implementation of a mitigation project to restore kelp for the California Coastal Commission under a contract with the Phillips Petroleum Company; Project Director of a contract to restore kelp beds in Santa Barbara County under the auspices of the California Department of Fish and Game; Principal investigator for a contract with the Marine Review Committee of the California Coastal Commission to study the effects of the San Onofre nuclear power plant on kelp beds; Expert witness on the effects of waste discharges on kelp bed habitats in the case *EPA v. City of San Diego* in Federal Court; Vice-Chair of the San Diego City Managers Water Conservation Committee; Co-Chair of San Diego Oceans Foundation forum on the Fate of the Point Loma Wastewater Treatment Plant; Chair of the City of San Diego Citizens Water/Sewer Review Committee; Chair of the Water Reclamation and Reuse Committee of the Metropolitan Sewer Task Force established to prepare a federally approved Facilities Plan for the greater San Diego area; and Vice Chair and Chair of the San Diego City Managers Water Conservation Committee.

- **Dale A. Glantz**, Senior Marine Biologist and Manager of Harvesting and Marine Resources; ISP Alginates Inc.

Responsible for the continual assessment of California and Baja California's kelp resources through aerial and diving surveys, kelp forest research and restoration, and underwater and aerial photography. Also manages all of ISP Alginates' kelp harvesting operations throughout California.

- **Charles T. Mitchell**, president and senior scientist, MBC Applied Environmental Sciences.

Founder and President of MBC with over 30 years' experience in directing and implementing environmental studies involving the monitoring and assessment of the effects of resource utilization on coastal environments from southern California to Alaska. He has published over 20 scientific papers, and is the senior author or editor on more than 600 major reports for industry, government, and academia. His major areas of expertise include fish ecology, habitat enhancement of coastal wetlands and kelp beds, fisheries, and artificial reef ecology.

Mr. Mitchell has worked closely with clients and local, State, and Federal regulatory agencies. He is the designer and patent holder of a variety of marine sampling devices. Active in both the private and academic sector, he currently serves as an appointed member of the Biology Advisory Council at the California State University, Long Beach, is the past Chairman of the American Institute of Fisheries Research Biologist- Southern California District. Member of the California Department of Fish and Game's Scientific Support Team for the Upper Newport Bay Ecological Reserve, and a member of the Board of Directors of Pro Esteros, a bi-national organization for the preservation of Baja California's coastal wetlands. He has also served as an invited panelist on joint US and Mexican meetings on environmental issues facing Baja California.

## FINDINGS & RECOMMENDATIONS

From May, 2001, through August, 2001, the Discharge Effects Science Panel reviewed numerous documents about the Point Loma Wastewater Treatment Program and the Point Loma Ocean Outfall. Reports provided to the Science Panel included:

1. City of San Diego, Metropolitan Wastewater Department, Environmental Monitoring and Technical Services Division, Ocean Monitoring Program. *Annual Receiving Waters Monitoring Report for the Point Loma Ocean Outfall*, volumes 1996 through 2000.
2. City of San Diego, Metropolitan Wastewater Department, Environmental Monitoring and Technical Services Division, Ocean Monitoring Program. *Quarterly Benthic and Trawl Monitoring Report*, January-March, 2001, and by request any other quarterly report.
3. City of San Diego. *Point Loma Ocean Outfall NPDES Permit Application and 301(h) Application for Modification of Secondary Treatment Requirements*, summary and technical portions, April, 2001.
4. Sierra Club. *Analysis of the Metals and Organic Loading Indicators in the Sediments of the Point Loma Ocean Outfall Area*, November 18, 2000.

During August 22, 2001, the Science Panel convened an all-day meeting at Scripps Institution of Oceanography to receive presentations from both the City of San Diego and the Sierra Club, and to draft their Findings and Recommendations. The City of San Diego's presentation was led by Alan Langworthy, Environmental Monitoring and Technical Services Division Deputy Director of the City of San Diego's Metropolitan Wastewater Department. Additionally, City of San Diego Technical Services Division staff Lori Vereker, Assistant Deputy Director, and Walter Konopka, Senior Chemist, participated in the City's presentation.

The Sierra Club's presentation was by Ed Kimura, Water Committee Chair of the Sierra Club's San Diego Chapter and author of the Sierra Club's November 18, 2000, analysis. Lori Saldana of the Sierra Club was present to assist. Doug Sain, S.A.F.E. Treatment Coalition's lead consultant, was the moderator and compiled this report. The presentations and question and answer periods lasted approximately four and a half hours. During the entire afternoon and as late as January 2002, the Science Panel developed and agreed unanimously to the following Findings and Recommendations:

### DESP FINDINGS

#### A. Review of S.A.F.E. Treatment Coalition Position

##### 1. Cost Effectiveness:

- a. The Point Loma Wastewater Treatment Plant's (PLWTP) permitted discharge does not impact the San Diego shoreline.
- b. Secondary treatment standards will not solve or reduce San Diego's beach and bay closures, because the closures appear to be caused by pollution from other sources.
- c. Existing data suggests the incremental advantage of secondary treatment is negligible to the ocean environment.
- d. The City of San Diego's Pretreatment/Source Control Program has provided significant treatment and discharge benefits with minimal costs to the City.

##### 2. No Harm:

- a. Extensive monitoring of the City's discharge has not found harmful impacts to the ocean environment.

- b. Metal contaminants in the discharge are far below California State Ocean Plan standards.
- c. The variations exhibited in metal contaminants and biological community structures are tightly coupled to grain size and total organic carbon (TOC). Relative to this type of variation the outfall has a negligible impact.
- d. While there are some measurable outfall effects, spatial variability related to the outfall's effects is not greater than the natural variability.
- e. Other human caused effects, such as dredge disposal and non-point sources, have a larger degrading impact on the ocean environment than the PLWTP's discharge.

**3. Treat City Equally:**

- a. U.S. EPA regulations should be the same for the City of San Diego as for other cities with Clean Water Act waivers.
- b. Safeguards are provided by the 301(h) five-year renewal program, which requires demonstration of discharge's negligible effects.
- c. Future protection is provided by continuous monitoring and annual regulatory review.

**B. Review of Sierra Club Analysis**

- 1. The use of selective analysis is incomplete and could be drawing misleading conclusions, such as extrapolating the "analysis of sediment concentrations of the metals and organic indicators" with "whether or not the marine environment can remain healthy if these trends continue indefinitely with time."
- 2. The suggestion that TOC is related to metal concentrations is scientifically interesting but does not refer to ecological effects thresholds that should be of concern in the future.
- 3. Charts containing averages and trends need more rigorous analysis, because the averages and trends compound known variables that confuse the interpretation of the discharge's impact.

**DESP RECOMMENDATIONS**

- 1. To differentiate site specific changes from regional trends, some fixed monitoring stations should be added to the Random Sampling Program.
- 2. Deep ocean monitoring stations should be sited.
- 3. Support the City of San Diego's proposal to explore methods to evaluate the possible future ecological impacts of various solids mass loadings at the PLWTP at a maximum design flow rate of 240 mgd.
- 4. Encourage the U.S. EPA and State to fund an independent study allowing the City to experimentally increase current mass loadings in order to study possible future ecological impacts of various solids mass loadings at 240 mgd.

**ADOPTION OF FINDINGS & RECOMMENDATIONS**

The SAFE Treatment Coalition Executive Committee adopted all of the Discharge Effects Science Panel's Findings and Recommendations. Letters of commendation to the members of the Panel were approved, and this report was authorized for release to the public.



# San Diego Bay Council

A coalition of environmental organizations dedicated to protection and restoration of San Diego coastal waters

*3/12*  
*Daniel H. — please include*  
*in record of the hearing for the permit*  
*NPDES*  
*permit*

March 12, 2002

State of California  
Regional Water Quality Control Board  
San Diego, Region  
9174 Sky Park Court, Suite 100  
San Diego, CA, 92123

Subject: NPDES Renewal Permit, City of San Diego, E.W. Blom Point Loma Wastewater Treatment Plant and Ocean Outfall

Dear Chair Minan and Members of the Board:

The San Diego Bay Council is dedicated to the protection of our coastal waters. We have given careful consideration to the short and long term consequences of the renewal permit on human health and the marine ecosystems. In the short term we are not opposed to the biochemical oxygen demand (BOD<sub>5</sub>) and total suspended solids removal rates, as they are the same as the current permit. However, from the long-term view to protect our coastal waters, we cannot support this renewal permit without significant improvements to the ocean monitoring and reporting program. The reasons for this position and our recommendations are listed below:

1. The projected mass emissions provided on page 10 of the U.S. Environmental Protection Agency Tentative Decision on the subject permit renewal shows an increase in the annual mass emission rate from 8,888 metric tons in year 2000 to 14,100 metric tons in 2001, then increasing annually to 14,600 metric tons in 2005 thereafter decreasing to 13,599 metric tons in 2006. The reason for this large incremental increase is not given in the Tentative Decision. The conclusion that the applicants proposed discharge will satisfy the CWA sections 301(h) and (j)(5) and 40 CFR 125, Subpart G is based partly on the analysis of the receiving waters monitoring data presented in this Decision. However, the analysis does not take into consideration the increased mass loading due to the applicant's projected mass emissions. We believe this to be a serious defect in this analysis.
2. The Ocean Pollution Reduction Act (PL 103-431) that allowed the initial 301(h) waiver from secondary treatment for the Pt. Loma Wastewater Treatment Plant has the objective to reduce the mass emissions by requiring the City of San Diego to achieve a system capacity of 45,000,000 gallons per day of reclaimed wastewater by January 1, 2010. The City has achieved this requirement. The Tentative Decision does not expressly take into consideration in their analysis the beneficial effects of diverting reclaimed water from the treatment plant including reduced mass emissions.
3. Page 19 of the Tentative Decision discusses the models used by the City and EPA in 1994 to determine the deposition rate of solids around the outfall. After 5 years of plant operations and the availability of ocean monitoring data, EPA does not provide analysis to validate the estimates of the deposition rates of the solids using actual data. EPA discusses the "zone of initial dilution" but does not provide any estimates of the physical extent of this zone. In our view it is essential to have a fate and transport modeling validated by actual ocean data in order to provide reliable and useful estimates on the impacts of the discharge from the outfall.

4. The City ocean monitoring report notes that toxic matter from the LA 5 disposal site is being detected at the ocean monitoring stations closest to this site. We recommend that measures be taken to assure that the LA 5 disposal site is properly managed.
5. We were able to only spot check the Tentative Decision analysis of the ocean monitoring data to see if future trends in the contamination levels were being addressed. We were disappointed. Here are two examples:
  - Page 21 states that there appears to be no spatial or temporal trends in the total organic carbon (TOC). We disagree. Examination of the TOC at stations going in a northerly direction from the outfall: E17, E20, E21, E23, E25 and B8 all show slight increasing trends in the TOC values starting from year 1996 to 2000. See Figure 1. Examination of the TOC at all other stations do not show any discernable trends.
  - Page 21 states that the biochemical oxygen demand (BOD<sub>5</sub>) shows no apparent increase during the period of discharge. We do not agree. Figure 2 depicts the distribution of the BOD levels at all stations for years 1996, 1999 and 2000. The shift in the distribution average value is evident between 1996 and 1999. While the average for year 2000 is less than 1999, the shape of the distribution shows a shift towards higher values compared to 1996.
6. The biological impact of the discharge analysis starting on page 25 of the Tentative Decision does not address the impacts on wildlife. We refer to marine mammals and birds. Both feed on the fishes. The bioaccumulation of the toxic material in the fishes and the effects on the reproductive and general health of these species has not been presented
7. Episodic events such as the El Niño and La Niña can make significant changes to the sediment quality through resuspension and subsequent transport. These events can also modify the distribution of the sediment size, phi. The Tentative Decision ignores these transient effects on the sediment quality and the subsequent effects on the marine life.
8. The Tentative Decision uses the Benthic Response Index (BRI) in determining the impacts on the benthic species. As the BRI has only been recently developed by SCCWRP, has it undergone peer review?
9. Page 39 begins the discussion on the impact of discharge on recreational activities. The total and fecal coliform and enterococcus are used as the indicators of the pathogens discharged from the outfall. The shortcomings of these indicators are well known. The fact other pathogens such as viruses have longer lifetimes in the ocean environment means that the absence of the indicator bacteria does not mean the absence of the longer-lived pathogens. The potential transport of these pathogens shoreward towards the kelp beds used by scuba divers and areas frequented by those in sailboats where they are exposed to water spray poses human health risks. The statement that the density stratification traps the plume below the depth of the kelp beds is only true during the times during non-isothermal water conditions. During the cooler months, near isothermal water conditions exist. The Tentative Decision does not consider these conditions and the probable impacts to human health. There are other conditions such as upwelling of the nutrients and potentially contaminated sediments transported from the deeper waters toward the shore.
10. The Monitoring and Reporting Program needs to be improved in several areas.
  - Improved monitoring methods to detect health-threatening pathogens are needed.
  - Increase the in-water information (more samples, more sites). Integrate the water monitoring program with the remote sensing program.
  - We recommend remote sensing of various types to sample a larger coastal area in order to determine the cumulative impacts of the discharges from the Pt. Loma and South Bay Ocean Outfalls as well as the discharges from the Mexican treatment plants. Correlations of the remote sensing data and the in-water monitoring data will serve to improve the effectiveness of the ocean monitoring program.

11. There should be deep-ocean monitoring to determine the discharge impacts on the marine ecosystems at these deeper depths. For example, the San Diego 1999 Annual Receiving Waters Monitoring Report on page 36 notes the existence of a sediment trap in the La Jolla submarine canyon. This raises the question of the impact of the trapped sediment and the potential for bearing high level of contaminants on the marine life.
12. An independent, qualified body should conduct annual reviews of the ocean monitoring data. Currently, this is conducted only once every five years. These reviews will provide information on the health of the marine ecosystem on a more, timely basis.
13. The data in the monthly, quarterly, and annual monitoring reports should be made available to the public in electronic form. Currently, only hard copies are available for review at the RWQCB office. Conducting detailed reviews without resorting to expensive copying of these reports is not possible. Furthermore, analysis of the large amount of data being gathered requires that the data be in electronic format to be processed by computers.

Thank you for this opportunity to present our views on this renewal permit.

Sincerely,

		
Marco Gonzalez Surfrider Foundation	Bruce Reznik San Diego BayKeeper	Laura Hunter Environmental Health Coalition


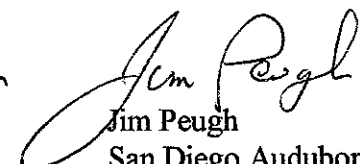
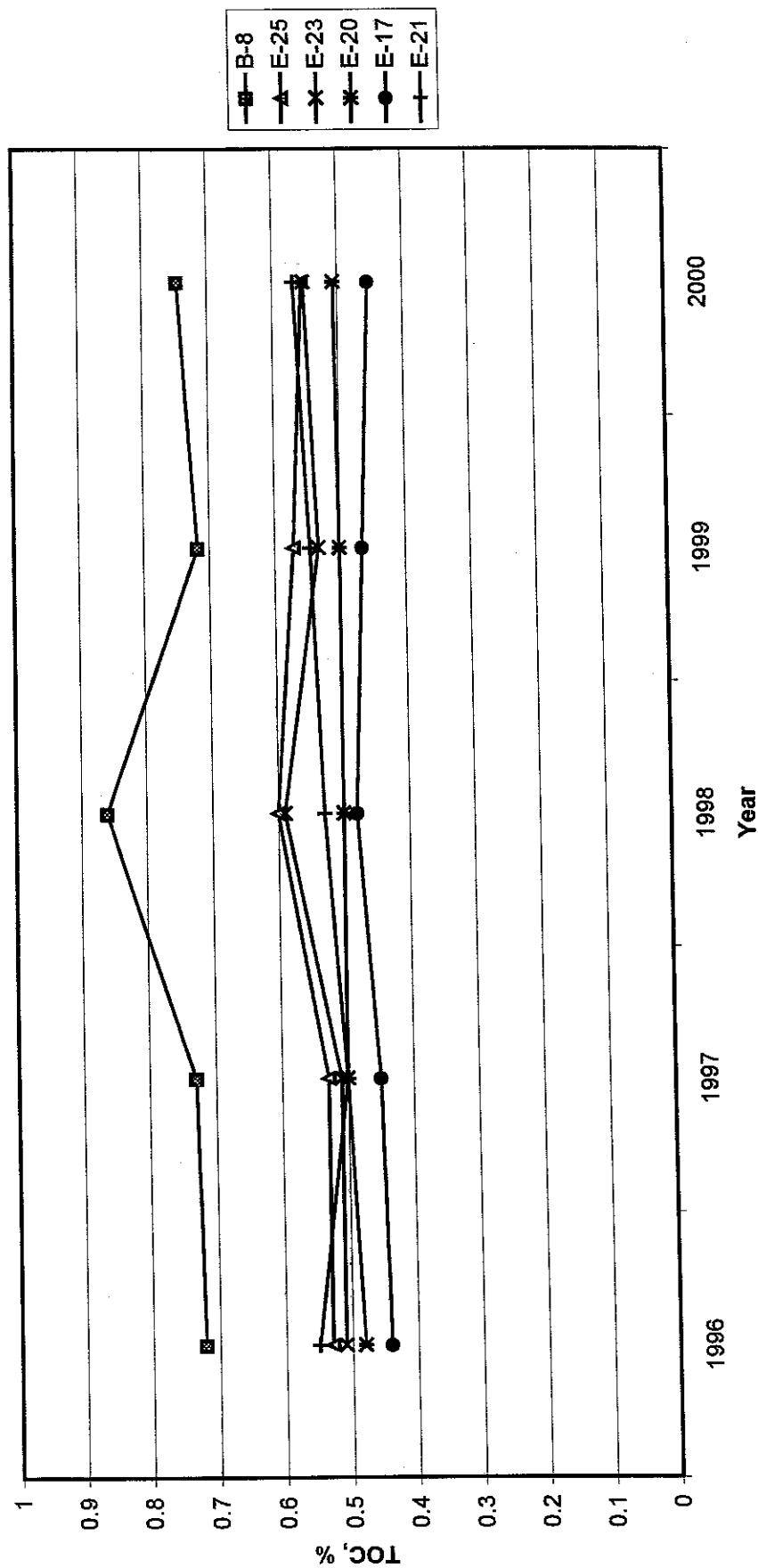
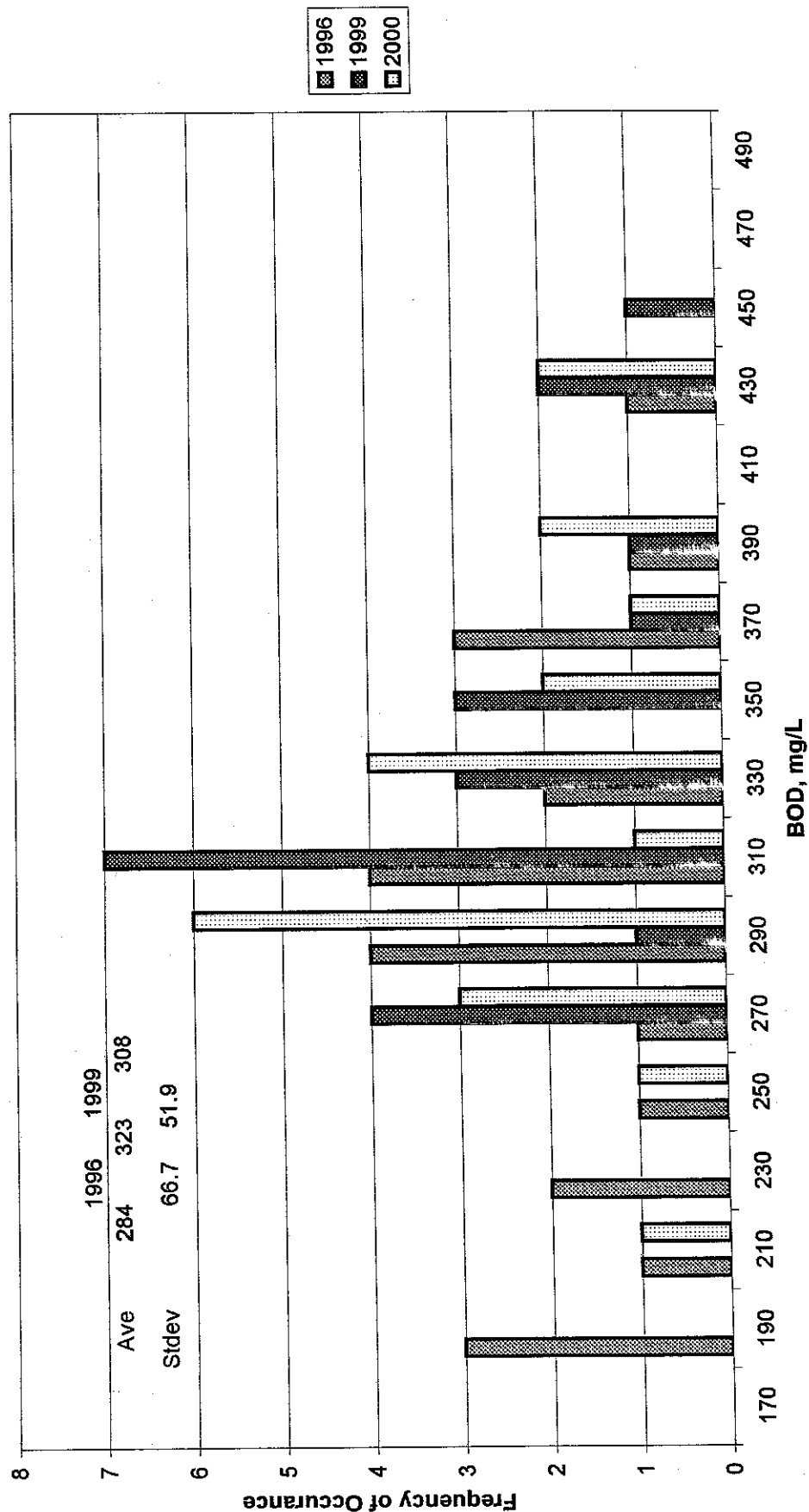
	
Ed Kimura Sierra Club San Diego Chapter	Jim Peugh San Diego Audubon Society

Figure 1  
 Stations with Increasing TOC trends  
 Years 1996 to 2000



**Figure 2**  
**Frequency Distribution, BOD in Sediments**  
**Years 1996, 1999, 2000**





SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

2002 MAR 12 A 11:25

*3/12*  
*Brian Kelley*  
*included in*  
*record of Pt. Loma hearing*

EMERALD PLAZA  
402 West Broadway, Suite 1000  
San Diego, California 92101-3585  
Tel 619.544.1300  
Fax 619.234.0571  
www.sdchamber.org

March 11, 2002

Mr. John Robertus  
Executive Officer  
California Regional Water Quality Control Board,  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

RE: Tentative Order No. R-92002-0025, NPDES Permit No. CA0107409 for the  
City of San Diego – Wastewater Treatment Plant Discharge to the Pacific Ocean

Dear Mr. Robertus:

The San Diego Regional Chamber of Commerce strongly supports the U.S. Environmental Protection Agency's (EPA) Tentative Decision to grant the City of San Diego a modified National Pollutant Discharge Elimination System (NPDES) permit consistent with section 301(h) of the Clean Water Act (CWA), and urges the California Regional Water Quality Control Board (RWQCB) to adopt the EPA's recommendations.

The EPA's tentative approval of modified standards suggests that the propagated balance of our ocean's indigenous population is not interfered with or disturbed by the discharge dispersed to the waters through the Point Loma Ocean Outfall.

Extensive scientific studies and monitoring demonstrate that the City's wastewater treatment and discharge are more than sufficient to protect the marine environment and the health of all San Diegans. The Safe And Fair Environmental Treatment Coalition (S.A.F.E.), which the Chamber is a member of, conducted an independent review of the City's monitoring data and analysis, which is contained in the Discharge Effects Science Panel report (January, 2002). Both S.A.F.E.'s independent report and, more significantly, the EPA's tentative decision consistently support the City of San Diego's application and demonstrate that an expensive upgrade to secondary treatment at a potential cost of \$3 billion is unwarranted and would provide no noticeable benefit to the ocean environment.

The permit proposed by EPA provides for full protection of the public health and environment. Water quality is an important issue for the Chamber, its 3,200 members and their employees. In this case, scientific evidence demonstrates that higher treatment standards would result in no environmental benefit for our ocean environment. Consequently, it would make no sense to impose a grossly unfair economic burden on the City of San Diego and its nearly two million ratepayers.

Therefore, on behalf of the Chamber, I urge you to support the EPA's recommendations.

Sincerely,

Eugene Mitchell  
Vice President, Public Policy

EM:av



401 B Street  
Suite 1100  
San Diego  
CA 92101  
619.234.8484  
619.234.1935 fax

March 11, 2002

Mr. John Robertus  
Executive Officer  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Subject: Tentative Order No. R-92002-0025, NPDES Permit No. CA0107409 for the City of San Diego – Wastewater Treatment Plant Discharge to the Pacific Ocean

Dear Mr. Robertus:

On behalf of the San Diego Regional Economic Development Corporation I want to voice our organization's strong support for the U.S. Environmental Protection Agency's (EPA) Tentative Decision to grant the City of San Diego a modified National Pollutant Discharge Elimination System (NPDES) permit in a manner consistent with section 301(h) of the Clean Water Act (CWA), and to request the California Regional Water Quality Control Board (RWQCB) adopt the EPA's recommendations.

The information contained in the EPA's tentative approval clearly shows the City of San Diego's wastewater treatment methods are more than sufficient to protect the marine environment and the health of all San Diegans. For that reason we urge you and the Board to approve the permit. Moreover, as has consistently been shown, any demand for a higher level of treatment at the plant, would impose a grossly unfair economic burden on the City, its participating agencies, and the nearly two million affected ratepayers *while leading to no net environmental benefit.*

The permit proposed by the EPA provides for full protection of the public health and environment. By tentatively issuing this permit, the EPA and the RWQCB recognize what all-available scientific information confirms – San Diego's treatment system causes no environmental harm.

Thank you for the opportunity to communicate with you on this most important matter.

Sincerely,

W. Erik Bruvold  
Vice President and Director of Quality of Life Issues

*JK 3/12*  
*Brian Kelley*  
*pls include in Pt Loma hearing record.*  
2002 MAR 12 11:26  
SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

## SIERRA CLUB, SAN DIEGO, COMMENT TO DRAFT DISCHARGE PERMIT

## A. OBJECTIONS

Objection 1. The mass emissions limitations on total suspended solids (tss), from 15,000 metric tons per year, through 12/31/05, to 13,599 mt/yr, by 1/1/06, are grossly excessive and must be substantially reduced. As it stands, they violate the Clean Water Act (CWA) and is based on facts that are either erroneous or concealed.

Objection 2. Failure of the draft permit to require the discharger to reclaim and reuse any part of its wastewater violates Federal and State law, ignores existing reclamation reuse facilities, and disregards the direct effect such reuse has on reducing tss mass emissions into the ocean.

## B. SUGGESTED REVISIONS

Revision 1. The first year (2002) mass emissions of tss should be 10,200 mt/yr (the actual tonnage for 2001) and decline to 8,800 mt/yr by January 1, 2006.

Revision 2. The discharger should be required to achieve a reclamation reuse volume of 25 mgd, by January 1, 2006, thereby enabling it to achieve an annual mass emissions reduction of 1,400 metric tons by that year.

## C. EXPLANATION

## 1. Mass emissions of suspended solids(tss)

## a) (violation of the CWA's OPRA provision)

While the draft permit mass emissions requirement of 15,000 mt/yr, through 12/31/05, decreasing to 13,599 mt/yr on the following day (1/1/06), purports to comply with Section 301(J)(5) of the CWA (hereinafter "OPRA") (Facts doc., pages 3&8), actually, it grossly violates that law. As the draft permit correctly states (Facts, page 3), OPRA requires the discharger to achieve..."4. A reduction of tss into the ocean during the permit modification period" Far from requiring a reduction during this renewal period, the draft permit's period limitations of from 15,000mt/yr to 13,599 mt/yr is from 50% to 33.3% higher than the discharger's actual me total during 2001 (10,200 metric tons). Moreover, the discharger's me totals have averaged about 10,000 mt/yr for each of the past four years. Nowhere in the draft permit documents is there any mention of this current and prior year data. The omission is especially troubling because the underlying data is on file with this Regional Board and the annual me tonnage totals could easily have been discovered by one telephone call to the City's Metro Wastewater Department.

## b) (violation of the CWA's primary statutory goal)

The primary goal of the Clean Water Act is the "steady reduction of pollutants discharged into receiving waters." This goal is expressed in the Act, in its legislative history, and by various appellate decisions. (see "Summary of Law", attached hereto as "APPENDIX C")

The permission given this discharger to significantly increase, rather than decrease, the worst of its effluent



pollutants represents an inexplicable error by the Federal agency expressly charged with enforcing the Act. Moreover, it represents a glaring oversight by the State agency given primary responsibility--under both Federal and State laws--for protecting the quality of our near-shore ocean. (Note. Because the Point Loma plant does not disinfect its effluent, 15%-20% of all viruses and pathogens that go into Metro toilets is discharged through the outfall, riding piggyback on the suspended solids.)

c) (inflated influent flow projections) The draft permit documents state that "EPA based its mass emission calculations on 1995-2000 concentrations and discharger's projected end of permit flow of 195 mgd, dry-season, monthly average." (Facts, page 2) This projection is 20 mgd higher than the actual 2001 daily average of 175 mgd and apparently was inflated to justify a higher me limitation. The inflation is obvious when the current flow volume is compared with the declining flow trend over the past eleven years. Had investigators at either EPA and/or the Regional Board looked at the Point Loma plan flow data for 2001 and prior years (filed with the Board on a monthly basis), they would have discovered facts the discharger takes pains to conceal. Instead of increasing with population over time, influent flows have actually decreased by 15 mgd since 1989 (-7.9%). (see the Flow Chart at APPENDIX A)

The discharger has repeatedly argued that the steady increase in its population supports its future flow projections. But, this overlooks the effects of conservation and is belied by the current and past mass emission and influent flow data. Indeed, while the City's population increased by nearly 17%, between 1989 and 1999, Point Loma's influent flows decreased by nearly 8% during the same period (see Population chart at APPENDIX B).

The discharger has consistently inflated its flow projections. It did so in its application for the first waiver permit, in 1995. Now, it has done so, again, and again, there is no mention of the actual flows--current or past--in the draft permit documents. The failure of both agencies to ascertain the "actual" tss mass emissions and influent flows is profoundly disturbing.

d) (The 80% tss removal basis for the me limitations disregards the the Point Loma facility's actual performance)

The second basis cited by the draft permit documents for setting high tss mass emissions limitations is the OPRA requirement that the discharger must remove "not less than 80% of tss" in the Point Loma effluent (Facts, page 3). Nowhere in the draft documents is mention made of the actual tss removal levels for the past four years--which have hovered between 84% and 85%. Since the discharger has been consistently removing tss at above 84%, basing the mass emissions limitation on an 80% removal makes no sense and nowise justifies the permit's excessive me levels. (Note. OPRA does not mandate an 80% removal level, but only prohibits a lesser percentage.)

e) (suggested revision)

By adopting the suggested revision, the 2002 me limitation for tss will be 10,200 mt/yr and the 2006 limitation will be 8,800.

The first year limit is the actual tss discharge for 2001, while the 2006 limit of 8,800 mt/yr reflects a 1,800 metric ton me reduction the discharger can achieve by reclaiming and reusing just 25 mgd of its influent flow (see section 2(b), infra).

The "declining mass emissions" requirement in OPRA (CWA Section 301(J)(5)(#4) was obviously intended to achieve the primary goal of the Act, to reduce pollutant discharges into receiving waters. The suggested permit revision complies with both OPRA and the Act's purpose, while the draft permit complies with neither.

2. Failure to require any water reclamation and reuse

a) (Reclamation reuse is mandated by Federal and State law and the discharger's own ordinance)

The Clean Water Act, Federal Court decisions, California's Constitution and Water Code, and the City of San Diego's reclamation reuse ordinance, all mandate that as much of the discharger's wastewater, as is practicable, must be reclaimed and applied to beneficial uses. (See "Summary of Law" attached, hereto, as "Appendix C".)

The absence of any reclamation reuse requirement in the draft permit is troubling. Especially so is the concurrence in this of the Regional Water Board. Both under the CWA and California law, the latter agency has primary authority and responsibility to not only protect the near-shore ocean quality, but also to prevent the waste of water resources. It must be as obvious to administrators, as it is to the Sierra Club, that every gallon of treated wastewater that is discharged, rather than reused, is a gallon wasted.

(Note. The only mention of reclamation reuse in the draft permit documents is a "Reclamation Report" requirement that could not be more vacuous. Only the discharger's plan to increase its water reclamation is to be reported, in 2002 and 2005, and no reuse intention need be reported. Indeed, in the parenthetical sentence that concludes this reporting provision, EPA and the Regional Board display an indifference to water reclamation and reuse that is unconscionable: "(This is not a requirement for the discharger to actually reclaim wastewater or reuse reclaimed water.)" (Permit, page 56(h)(8))

b) (The inverse relationship between reclamation reuse and mass emission discharges)

It is irrefutable that, for each 1 mgd of wastewater the discharger diverts from its Point Loma facility and outfall to reclamation reuse, there is a corresponding reduction in the facility's influent flow and effluent mass emissions. Thus a diversion of 1 mgd reduces flow by 1/175 (2001 daily average). It also will reduce the me by the same decimal (i.e., .006). Applying this decimal to 10,200 metric tons (tss total for 2001), each 1 mgd diversion reduces the me by 61 tons. Finally, a diversion by this discharger of just 25 mgd into reclamation reuse would reduce its annual me discharges by over 1,400 mt/yr.

c) (Discharger can achieve a 25 mgd diversion t  
reclamation reuse during this modification period) o

The discharger currently operates a 30 mgd water reclamation plant, called "North City" and will commence operating a 7 mgd reclamation plant, called "South Bay" during this modification period.

NORTH CITY: The discharger is currently reusing approximately 7 mgd of reclaimed water from this facility, marketing it through a "backbone delivery system" for irrigation and other uses. the sludge is pumped to the City's sludge-disposal facility for full disposal. The draft permit makes no mention of this ongoing reuse, nor its effect in lowering the discharger's mass emissions tonnage.

The draft permit documents also make no mention of the discharger's planned "Potable Reuse Project", which has been approved to reclaim and reuse an additional 20 mgd of the effluent from this facility. This project has already been approved by all pertinent State and Federal agencies, but was shelved three years ago by the then City Council for political reasons.

SOUTH BAY: This reclamation facility is expected to commence operations in the next year or two and the discharger has announced that virtually all of its initial 7 mgd capacity will immediately be marketed for reuse. This facility is described in the draft permit, but it is said to have no effect on reducing mass emissions. Since no sludge disposal facility now exists to serve this plant, we are told, its sludge must be conveyed back to the Point Loma plant for disposal. No reason is given that explains why this South Bay sludge cannot be conveyed to the City's sludge-disposal facility, at Miramar, through the same pipeline that now takes the Point Loma sludge there.

d) (The suggested revision is readily achievable, will reduce mass emissions during this permit period, and achieve compliance with applicable laws)

By failing to require any reclamation reuse whatsoever, the draft permit violates the California Constitution and other applicable Federal and State laws cited in Appendix C. Article Ten, Section Two, of the California Constitution provides as follows: "The general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with the view to the reasonable and beneficial use thereof..."

This discharger currently has approximately 7 mgd of reclamation reuse of the 30 mgd capacity at its North City facility. It will soon have an additional 7 mgd of reclamation reuse upon completion of its South Bay facility. Further, the discharger could, if it wished, achieve an additional 20 mgd of reclamation reuse at North City, by merely implementing its, State certified, "Potable Reuse Project".

If the City does nothing more, it will be diverting away from Point Loma and reusing at least 14 mgd of its wastewater during this modification period. Because of this, its tss mass emissions will decline by approximately 816 mt/yr. If it made the political

decision to implement its shelved Potable Reuse Project, the discharger would further reduce its me by 1,100 mt/yr.

#### C. CONCLUSIONS

As it stands now, the draft permit violates anti-pollution provisions of the CWA. Most clearly, it violates requirement #4 of OPRA by setting the first years of the renewal period at a level 50% higher than the 2001 total of 10,200 metric tons. Then, the draft seeks to soften the error by lowering the 2006 level to 13,599 mt/yr, still leaving tss mass emissions one-third higher than currently.

By adopting the suggested revisions of the San Diego Sierra Club, the agencies will (1) bring the mass emissions limitations into compliance with the Act, (2) significantly reduce the discharge of non-disinfected effluent into the ocean, and (3) achieve a significant level of water conservation that complies with the Constitution and Water Code of California.

Robert L. Simmons, Member, Executive Committee  
Sierra Club, San Diego  
P.O. Box 19932  
San Diego, CA 92159  
(619) 464-0325 (fax) same (e-mail) rls@acusd.edu

# SIERRA CLUB COMMENT TO CITY DRAFT PERMIT RENEWAL APPENDIX A & B

## I. Point Loma Wastewater Flows, 1990-2000

1990: 186 MGD (204,600 AFY(3))  
2000: 174 MGD (191,400 AFY)

Wastewater Flow decline, 1990-2000: 12 MGD (13,200 AFY)  
Percentage decline: 6.4%

## II. INCREASED CITY OF SAN DIEGO POPULATION, 1990-2000 (4)

January, 1990: 1,085,000.  
January, 2000: 1,277,000.  
Increase in City population, 1990-2000: 192,000.  
Percentage increase: 17.6%

## III. THE PRIMARY CAUSE OF THE DECLINING WASTEWATER VOLUME: Mandatory Indoor Plumbing Conservation (City, 1992-98)5)

### 1. Low-flow Toilet, Urinal & Showerhead Replacements

Estimated Voluntary Rebate Program Savings: 7,000 AFY (6.4  
mgd)

Estimated Compelled Toilet Replacement Savings: 14,500 AFY  
(13.1 mgd)

Total Estimated Reduction by Plumbing Conservation: 21,500 AFY  
(19.5 mgd)

(footnotes) (1) indoor use comprises approximately 60% of total  
consumption

(2) The source of the wastewater volume data is the Regional  
Water Quality Control Board, San Diego Region

(3) "afy" means acre feet per year and is the standard measure  
of water supply, while "mgd" means million gallons per day  
and is the standard measure of wastewater volume

(4) The source of the population data is the San Diego Area  
Government (SANDAG)

(5) The source of the City's plumbing conservation ordinance

SIERRA CLUB COMMENT TO NPDES DRAFT PERMIT  
APPENDIX C.

Summary of Laws Requiring Reclamation Reuse

(a) Relevant Federal Law

The Federal "Clean Water" Act mandates wastewater reclamation and re-use to the maximum feasible extent, to conserve water and achieve a steady reduction in pollution discharges into the ocean.

The "Clean Water" Act, 33 U.S.C. 1251, et. seq. (hereinafter "Act") ordains a policy of reclaiming waste water and beneficially re-using it (hereinafter "recycling") to both conserve water and reduce pollution discharges into receiving waters. Relative to the latter purpose, the clear and expressed intent of the Act is to steadily reduce and eventually eliminate all polluting discharges into navigable waters. 33 U.S.C. 1251(a)(1); *Chevron U.S.A., Inc. v. Hammond*, 726 F.2d 483, 489, (9th Cir. 1984).

(NOTE. Other supporting case authorities omitted for this purpose.)

The only practicable way a municipal discharger can satisfy this pollution reduction requirement is by implementing a steadily growing program to recycle its waste water. Recognizing this cause and effect relationship, the Act imposes a recycling duty on the EPA Administrator:

"...(T)he Administrator shall conduct, on a priority basis, an accelerated effort to develop, refine, and achieve practical application of...methods for reclaiming and recycling water and confining pollutants so they will not migrate to cause water or other environmental pollution..." 33 U.S.C. 1255(d)(2).

With these Act provisions in mind, the U.S. District Court for New Jersey held that the "Clean Water" Act requires water recycling in order to achieve a reduction in waste water effluent volumes to the maximum extent feasible, stating "the Clean Water Act was intended to encourage the use of treated waste water - through recycling or reclamation - rather than the mere discharge of the waste water into another body of water." *Township of Parsippany-Troy Hills v. Costle*, 503 F.Supp 314, 327 (N.J. 1979); *aff'd* 639 F.2d 776 (3d. Cir. 1980).

In its order renewing respondent's NPDES permit in 1990, this Regional Board expressly required the City to comply not only with all conditions contained in the permit itself, but also to comply with all provisions of the CWA and California's Water Code. (Board Permit Order 90-32, provision 2, at p. 28.)

In a recent Southern District of California "Clean Water" Act case, Federal Judge, Brewster, affirmed the Act's policy concerns with conserving water and the prudent use of waste water in the following Conclusion of Law:

"The reduction of unnecessary consumption of water and the

prudent use of waste water in sewage treatment systems are goals of the Act." Conclusion of Law Four, 6/22/91, EPA Administrator v. City of San Diego and Sierra Club, Intervenor, 88-1101 (RMB), citing Act sections 1251 (B) and (G), and 1254 (O).

Title 33 U.S.C. 1251(b) provides, in pertinent part:

"It is the policy of Congress to...plan the development and use (including restoration, preservation, and enhancement) of land and water resources."

Section 1251(g) provides, in pertinent part:

"Federal agencies shall cooperate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate, pollution in concert with programs for managing water resources."

#### (b) RELEVANT STATE LAW

##### California's "Prudent Use" Laws

Unique among the States, California has elevated its policy requiring all water resources be beneficially used to a constitutional mandate. Article Ten, Section Two, of the California Constitution provides as follows:

"The general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with the view to the reasonable and beneficial use thereof..."

This section imposes a "rule of reasonable use" on all waters of the state. The California Constitution goes on to state that the right to water "does not and shall not extend to the waste and unreasonable use or unreasonable method of use...of water."

Subsequent to this enactment, several important Water Code sections were adopted to implement and enforce it.

California Water Code sections 100 and 275 reemphasize the constitution's prohibition of waste or unreasonable use of water. Section 275 mandates that the Board take all steps necessary to prevent such waste or unreasonable use. Section 100 mandates that careful use of California's water resources is "in the interest of the people and for the public welfare." Cal. Water Code ^U 100 (West 1995). These code sections impose a duty upon the Board to take affirmative action in preventing the waste of water and promoting the public welfare and the future of California's water supply.

In recent years, the California legislature has plainly indicated its belief that waste water reclamation and beneficial re-use are required for the prudent use and conservation of water resources mandated by the Constitution. Water Code Section 13142.5(e) expressly applies to the State's coastal zone and to this case, providing:

"Adequately treated reclaimed water should, where feasible, be made available to supplement existing surface and underground supplies and to assist in meeting future water requirements of the

coastal zone..."

As if to make clear the nexus between California's reclaimed water policy mandates and municipal discharge programs such as respondent's, this Board, in "The Matter Of The Sierra Club, San Diego Chapter," Order No. WQ 84-7, 1984 WL 19064.6 (Cal. St. Wat. Res. Bd. (7/18/84), stated the following at page 6:

"In the future, in this case and in all other cases where an applicant in a water-short area proposes a discharge of once-used waste water into the ocean, the report of the discharge should include an explanation WHY THE EFFLUENT IS NOT BEING RECLAIMED FOR FURTHER BENEFICIAL USE. This is consistent with State policy, established by the Legislature in Water Code Section 13142.5(e)."

As recently as 1992, this Board confirmed the link between recycling and the prudent use/waste of water mandates. In decisional order #1630 ("Interim Bay-Delta Standards") appears this language:

"Wherever practicable, all agencies should reduce imported water demands by maximizing water reclamation re-use."

Other Water Code provisions reinforce complainant's position that failure to recycle waste water, where feasible, is a prohibited waste of a water resource.

Chapter 6 of the Water Code, entitled "Waste Water Re-Use", provides that the public interest requires the maximum re-use of waste water. Cal. Water Code ^U 461 (West 1994).

Chapter 7.5 of the Water Code, entitled "Water Recycling Act Of 1991", establishes goals for statewide reclaimed water re-use. Pursuant to section 13577, 700,000 acre feet per year ("afy") must be recycled by the year 2000, and 1,000,000 afy must be recycled by the year 2010.

Water Code Sections 13550 and 13551, as amended, require public and private entities to use reclaimed water for irrigation, industrial, and agricultural uses under conditions of availability, quality and cost, conditions that could be fully met by the City of San Diego. These statutes proclaim that the use of potable domestic water for irrigation, in lieu of reclaimed water, is a waste or unreasonable use of water under the California Constitution.

The intent of the California legislature to force expansion of waste water recycling is vividly shown by its steady enlargement of mandated uses. Water Code Section 13553 requires use of reclaimed water for toilets and urinals in all non-residential structures.

Water Code Sections 13555.2 and 13555.3, effective January 1, 1993, were added to the reclamation and re-use statute. These new provisions require dual plumbing in all new construction within metropolitan San Diego and in many other regions of the State, to accommodate reclaimed water. Under these provisions, all outdoor irrigation in new residential developments, and all new commercial and industrial structures, must use reclaimed water when it is available.



## CITY OF SAN DIEGO WATER RECYCLING ORDINANCE

### (c) Relevant Local Law

Expressing a recognition that San Diego's 90% dependence on imported potable water dictated an aggressive water reclamation and re-use program, San Diego city Council adopted a Water Reclamation ordinance in 1989 (#64.081, et. seq.). Among other things, the ordinance announced a goal of wastewater recycling (reclaiming and re-using) 70,000 acre feet per year (afy) of its Metro wastewater by the year 2010. The ordinance also mandated use of reclaimed water in place of potable water throughout the City and imposed criminal and civil penalties for violations.

Robert L. Simmons

Member, Executive Committee, Sierra Club, San Diego

Professor of Law, USD (ret)

Member, Advisory Committee, California Reuse Foundation

P.O. Box 19932

San Diego, CA 92159

(619) 464-0325 (fax) same

(E-mail) rls@acusd.edu